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2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 - - - - -x

5 KERRY ASHDOWN,

6 Plaintiff,

7 -against-

13-CV-1374
(HB) (GWG)

8 EQUINOX A/K/A

9 EQUINOX FITNESS CLUB and incorporated as

10 EQUINOX HOLDINGS, INC.,

11 JOE MATARAZZO a/k/a JOSEPH MATARAZZO,

12 MAURO MAIETTA,

13 LAWRENCE SANDERS,

14 MATT PLOTKIN a/k/a MATTHEW PLOTKIN, and

15 MATT HERBERT a/k/a MATTHEW HERBERT,

16 Defendants.

17 - - - - -x

18 DEPOSITION of MATTHEW PLOTKIN, taken by

19 Plaintiffs, pursuant to Stipulation, held at 200

20 West 57th Street, New York, New York, on

21 Tuesday, October 8, 2013, commencing at 10:00

22 a.m., before Margaret M. Harris, a Shorthand

23 (Stenotype) Reporter and Notary Public within

24 and for the State of New York.

A P P E A R A N C E S:

THE HARMAN FIRM, P.C.
Attorneys for Plaintiffs
200 West 57th Street
Suite 900
New York, New York 10019

BY: WALKER HARMAN, ESQ.

LAROCCA HORNIK ROSEN GREENBERG &
BLAHA, LLP
Attorneys for Defendants
40 Wall Street
New York, New York 10005

BY: PATRICK MCPARTLAND, ESQ.

P R E S E N T:

Lucas Larson

IT IS HEREBY STIPULATED AND
AGREED that the filing and sealing of
the within deposition be, and the same
are hereby waived;

IT IS FURTHER STIPULATED AND
AGREED that all objections, except as
to the form of the question, be and
the same are hereby reserved to the
time of the trial;

IT IS FURTHER STIPULATED AND
AGREED that the within deposition may
be sworn to before any Notary Public
with the same force and effect as if
sworn to before a Judge of this Court;

IT IS FURTHER STIPULATED that
the transcript is to be certified by
the reporter.

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Plotkin

M A T T H E W P L O T K I N, called as a
witness, having been first duly
sworn/affirmed by Margaret M. Harris, a
Notary Public within and for the State of
New York, was examined and testified as
follows:

EXAMINATION

BY MR. HARMAN:

Q Could you please state your name
for the record?

A Matthew Plotkin.

Q And do you have a middle name?

A Evan.

Q How do you spell that?

A E-V-A-N.

Q And Matthew Evan, Matthew Evan
Plotkin, is that your full legal name?

A Yes, it is.

Q And have you ever gone by any
other name?

A No.

Q And could you please give me your
address?

A



Plotkin

Q How long have you lived at that address?

A About three and a half years.

Q Do you live alone?

A I live with my wife.

Q And how long have you lived with your wife?

A About two years.

Q And have you been married for about two years?

A No, I've been married for about four months. Prior to our wedding we lived together though.

Q Congratulations.

A Thank you.

Q Can you please give me your wife's name?

A Sure. Danielle Giordano, G-I-O-R-D-A-N-O, Plotkin.

Q What's your date of birth?

A

Q Have you ever been deposed before?

1 Plotkin

2 A I don't believe so. I was
3 supposed to be deposed for a few other reasons,
4 but it never occurred.

5 Q When you say you don't believe
6 so, have you ever sat in a room before a court
7 reporter like this?

8 A No.

9 Q Under any circumstances?

10 A Not that I can recall. I know I
11 was supposed to and it got canceled a few times
12 for other reasons.

13 Q What do you recall about the
14 times that you were supposed to be deposed?

15 A I sat in a law office and
16 everything was set up and the other attorney
17 didn't show up. And then another time they just
18 canceled it last minute.

19 I think I even got sworn in and
20 then they canceled it because the other attorney
21 didn't show up.

22 That's all I can recall.

23 Q So these are two separate
24 instances?

25 A Yes.

1 Plotkin

2 Q Can you tell me about the first
3 one, the most recent one in time that you recall
4 where you were supposed to be deposed but you
5 were not?

6 A Two members got into a fight in
7 the club and they were in a legal dispute. One
8 was suing the other because he got hit.

9 Q And what club was this?

10 A Our 19th Street location. It was
11 years ago.

12 Q And were you named in the
13 lawsuit?

14 A No, I don't believe so. I was
15 just a witness.

16 Q You saw the fight?

17 A I saw the end of the fight, yeah.

18 Q And what about the second one?

19 A That was the second one. The
20 first one before that, I don't even remember.
21 It was 15 years ago. I just remember I had to
22 show up and give testimony, which I never gave.

23 Q Have you ever been a party to a
24 lawsuit?

25 A What does a party mean?

1 Plotkin

2 Q It means a plaintiff or a
3 defendant?

4 A Yeah, when I was seven years old
5 I got hit by a car.

6 Q And you were a plaintiff in a
7 lawsuit involving that accident?

8 A Yeah.

9 Q And how about on any other
10 occasion?

11 A I don't know if I was, I guess
12 through my divorce, which was about four years
13 ago.

14 Q And who were you married to?

15 A Gina, G-I-N-A, Plotkin.

16 Q Were you a plaintiff or a
17 defendant?

18 A I think I was the defendant.

19 Q And how about on any other
20 occasion, have you been a plaintiff or a
21 defendant in a lawsuit?

22 A (Gesturing.)

23 MR. McPARTLAND: You have
24 to answer verbally, Matt. It's a
25 yes or no.

1 Plotkin

2 A I can't recall, but I don't
3 believe so.

4 Q Well, we'll come back to it.

5 I'm primarily interested in
6 instances where you have been a plaintiff in a
7 lawsuit in a matter related to work or to
8 business, but if you think of anything, you will
9 let me know, I might circle back in a little bit
10 just to see if your memory has been refreshed in
11 any way.

12 Since you haven't actually been
13 deposed, I'm going to go over a few ground
14 rules.

15 My name is Walker Harman. I'm a
16 lawyer, I'm an employment lawyer. I represent
17 plaintiffs. I represent Kerry Ashdown in a
18 lawsuit that she has brought against Equinox and
19 other individuals, yourself included.

20 Do you understand that?

21 A I do.

22 Q And do you understand that you
23 are a defendant in this lawsuit?

24 A I do.

25 Q And that you are here today to

1 Plotkin

2 answer questions about that lawsuit?

3 A I do.

4 Q Are you represented by counsel
5 today?

6 A I am (indicating).

7 Q Who is your attorney?

8 A Patrick McPartland.

9 Q And how long has Mr. McPartland
10 been your lawyer?

11 A I'd say about six months.

12 Q I'm going to ask you a series of
13 questions today concerning this lawsuit. If you
14 don't understand any questions that I ask, you
15 tell me that you don't understand and I will
16 endeavor to rephrase it, the idea being that if
17 you answer the question the record is going to
18 read as though you understood the question.

19 Do you understand that?

20 A I do.

21 Q And in keeping with what your
22 attorney just told you, you have to verbalize or
23 we have asked that you verbalize any answers to
24 any questions that I ask you. The court
25 reporter can't always take down a gesture or a

1 Plotkin

2 nodding of the head or something like that. So
3 try to verbalize your answers.

4 Do you understand that?

5 A Yes, I do.

6 Q And this is a challenge for both
7 of us, but let's try not to interrupt one
8 another. Sometimes it gets a little difficult,
9 but it's helpful for me to remind you at the
10 beginning and for us to remind each other. Your
11 attorney might chime in on this issue, too.

12 Let me finish my question and
13 then you can provide your answer and we will
14 endeavor not to interrupt one other.

15 Do you understand that?

16 A Yes, I do.

17 Q During the deposition you can
18 take a break at any time so long as you have
19 provided an answer to any pending question.

20 However, while you are under oath
21 during a deposition I would ask that you not
22 talk to anyone about your testimony.

23 Do you understand that?

24 A I do.

25 Q Are you aware that you are under

1 Plotkin

2 oath today?

3 A I am.

4 Q And that failing to tell the
5 truth under oath is a crime called perjury?

6 A Absolutely.

7 Q This is the same oath that you
8 would be in if you met me at federal court
9 downtown and you had been sworn in before a
10 jury.

11 Do you understand that?

12 A I do.

13 Q The questions I am about to ask
14 you are routine questions that I would ask
15 anyone at any other deposition.

16 Are you under the influence of
17 any narcotics?

18 A I am not.

19 Q Have you taken any medication in
20 the last 24 hours that could impede your ability
21 to testify today?

22 A No.

23 Q Are you under the influence of
24 alcohol?

25 A No.

1 Plotkin

2 Q Can you think of any reason why
3 you can't provide your best and most truthful
4 answers here today?

5 A I can't.

6 Q Did anyone tell you to provide
7 inaccurate information today?

8 A No.

9 Q Are you currently employed?

10 A Yes.

11 Q Where?

12 A Equinox Fitness Clubs.

13 Q And how long have you been
14 employed there?

15 A Approximately 16 years.

16 Q What is your job title, if you
17 have one?

18 A My job title right now is senior
19 regional director.

20 Q And how long have you had that
21 title?

22 A About six months.

23 Q What region does that cover?

24 A The west side of Manhattan and
25 Brooklyn.

1 Plotkin

2 Q And do you have an office as part
3 of your --

4 A I do not.

5 Q So is there any particular place
6 where you report to work on a regular basis?

7 A I have ten clubs. I spend
8 one-tenth of my time at each of my clubs.

9 Q What are the ten clubs?

10 A We will go south to north.
11 Brooklyn, in Brooklyn Heights,
12 Tribeca, Soho, Printing House, Greenwich
13 Village, 19th Street, 17th Street, Columbus
14 Circle, 76th Street and 92nd Street. I believe
15 that's ten.

16 Q And as part of your job
17 responsibilities as the senior regional
18 director, what do you do?

19 A I oversee the general managers
20 and my regional staff to help support the clubs.
21 I make sure the clubs are operating correctly,
22 are selling our programming correctly, are
23 helping recruiting and hiring, as well as many
24 other assorted things. Anything my managers are
25 struggling with, I support them.

1 Plotkin

2 Q Do you supervise the GMs?

3 A I do.

4 Q And do you provide performance
5 evaluations for GMs?

6 A I do.

7 Q How frequently do you give
8 performance evaluations?

9 A Our standard performance
10 evaluations are done once a year.

11 Q And when are those completed?

12 A Usually by the end of April.

13 Q How are those completed?

14 A We have a standard template for
15 general managers that we use. Most, about half
16 of the grading is on really simple financial
17 results, and the other half is, you know, less
18 tangible soft skills, leadership, things like
19 that.

20 And we go through the format, I
21 fill it out on my own, and then I sit down with
22 the general manager and go through it with them
23 and they get graded on it.

24 Q Before having this position as
25 regional manager, what was your position?

1 Plotkin

2 A Before senior regional director I
3 was a regional director.

4 Q I'm sorry, senior regional
5 director.

6 So the promotion was to senior
7 regional director from regional director?

8 A That is correct.

9 Q Did the clubs that you oversee
10 change when you were promoted to senior regional
11 director?

12 A Yeah. They added in Brooklyn and
13 the two most northern clubs.

14 Q 76th and 92nd?

15 A Correct.

16 Q But overall is it fair to say
17 that your day-to-day duties didn't change other
18 than you were given more clubs to oversee?

19 A Correct.

20 Q And do you also, if necessary,
21 discipline general managers?

22 A Yes.

23 Q Have you ever disciplined a
24 general manager?

25 A Yes.

1 Plotkin

2 Q When is the last time that you
3 disciplined a general manager?

4 A Define "discipline."

5 Q Well, I asked you and you
6 answered the question, you said yes. So I
7 really would prefer for you to define it,
8 because it's your work environment and I'm not
9 trying to be difficult.

10 It's just if you are
11 uncomfortable with the term and there is another
12 term that you use or that Equinox uses in its
13 vernacular, then you tell me.

14 A Okay.

15 I look at discipline as the term,
16 it's a wide term. If I document a discipline,
17 we call it a writeup, or, you know, an employee,
18 I forget the exact item we used, an employee
19 performance report, and if that's documented,
20 that's like, I guess the real label of
21 discipline, but often I go into clubs and I say,
22 "hey," I give strong feedback, someone might
23 call that disciplining where I don't like what's
24 going on here, "You need to fix this," or "You
25 are not being consistent with your work

1 Plotkin

2 schedule."

3 For me, there are all different
4 gradations of discipline.

5 I guess the real one that we
6 should talk about is when I document it and it
7 actually is written up and it goes into the
8 employee file.

9 Q If you provide someone verbal
10 feedback or, as you say, strong feedback, you
11 provide strong feedback and you provide it
12 verbally, do you document that anywhere?

13 A Sometimes. Sometimes I don't.
14 We have something called a verbal warning, which
15 would be documented and put into their file, but
16 they don't necessarily have to sign it
17 themselves. It's just saying I had this
18 conversation with this employee or general
19 manager, it was about such and such, and it's
20 documented and in their file.

21 Q Do they see it?

22 A Not necessarily. Often they do
23 not. But I use the terminology, "This is a
24 verbal warning."

25 Q If you use that terminology,

Plotkin

"This is a verbal warning," and you write something up and you put it in a file, I take it we are talking about general managers, right?

A Often I help general managers write other people up, but in this scenario, sure.

Q I'm not talking about anyone in particular, so let's just keep it general for now.

So in the event you were to give someone a verbal warning and you were to memorialize it and put it in their file, what does that actually mean to you physically, what do you do? Where are these files?

A I have employee files on all my general managers and my regional staff.

Q Where are they located?

A They are located in my boss' office.

Q Who is your boss?

A My boss is John Pozzolini. He's the vice president of operations. P-O-Z-Z-O-L-I-N-I.

Q P-O-Z-Z-O-L-I-N-I?

1 Plotkin

2 A Correct.

3 Q And he's the VP of operations?

4 A Yes.

5 Q And where is his office located?

6 A 895 Broadway.

7 Q And there are files on all
8 general managers in Mr. Pozzolini's office?

9 A For my region, yes.

10 Q For your region?

11 A I don't know what my counterparts
12 do with their files.

13 Q Are these actual physical files?

14 A Yes.

15 Q And are they in a cabinet, a
16 filing cabinet of some sort?

17 A Yes, a locked filing cabinet.

18 Q Have you ever memorialized a
19 verbal warning that you have given to a general
20 manager?

21 A Sure.

22 Q When is the last time that you
23 did that?

24 A I believe I did it a year and a
25 half to two years ago to one of my general

1 Plotkin
2 managers that worked at our 17th Street
3 location.

4 Q What's that person's name?

5 A I'm searching through my memory
6 now.

7 I can't recall his name right
8 now.

9 Q Do you recall anything about him?

10 A Sure. He wasn't doing well and I
11 had to write him up several times and it led to
12 his termination.

13 The name will come to me.

14 Q So you provided verbal warnings
15 to this individual or a verbal warning to this
16 individual and you memorialized it?

17 A Yes.

18 Q How did you memorialize it?

19 A I wrote it up on an employee
20 writeup form.

21 Q Where are those forms located?

22 A In the filing cabinet in my
23 office. We have a database we can just get
24 blank forms from.

25 Q So would you have done that at

1 Plotkin

2 the 17th Street location or where would you have
3 done that?

4 A I believe I did it at the 17th
5 Street location.

6 Q Walk me through, what did you do?

7 So you gave him the verbal
8 warning and then what happened?

9 A I said, "Do you understand what
10 I'm talking about? Do you understand what you
11 are not doing correctly and what you need to
12 do," made him recite it back to me.

13 When he left, I documented it. I
14 did not have him sign it. I documented it and
15 put it in his file.

16 Q Did you show it to him?

17 A No, I did not.

18 Q Does this form have a name?

19 A I believe it's called an employee
20 performance sheet.

21 So we document things --

22 Q And it's something that you can
23 print out from Equinox's database?

24 A Yeah. Yes.

25 Q And who has access to these

1 Plotkin

2 employee performance sheets?

3 MR. McPARTLAND: Object to
4 the form, but you can answer.

5 A All managers, it's on our
6 database throughout the company. I'm not sure I
7 have the exact wording of the name of the form
8 correctly, but it will come to me.

9 Q Is this employee performance
10 sheet, is this related to verbal warnings only
11 or does it relate to other things?

12 A Other things, too, you could do
13 written warnings on there and final warnings.

14 Q So this sheet is for all three
15 types of warnings, verbal, written and final?

16 A And sometimes you can use it for
17 terminations, as well.

18 Q Why would someone be given a
19 written warning as opposed to a verbal warning?

20 A Our standard operating procedure,
21 when you start documenting with an employee, you
22 usually start with a verbal warning, then the
23 next step would be a written warning, then the
24 next step would be a final warning and then a
25 termination.

1 Plotkin

2 That's generally how we do it.

3 Q So somebody would get a verbal
4 warning, for instance, for the same conduct
5 after they had been given a verbal warning?

6 A Generally speaking, or it just
7 might be their first documented piece of
8 behavior, and then if another behavior comes up,
9 you usually go from verbal to written. It
10 doesn't have to be the same exact behavior, it
11 might be in the same genre of behaviors, but,
12 yeah, there are kind of steps that we take.

13 Q And does Equinox have a term for
14 this type of discipline?

15 A They do.

16 Q What is that term?

17 A I'm trying to -- I have lost the
18 term, but it's basically, you know, the
19 systematic process of writing up an employee,
20 documenting it due to poor performance.

21 Q But is that what it's called?

22 A No, that's not what it's called.

23 Q So right now you don't recall the
24 phrase?

25 A No, I don't. I'm sorry.

1 Plotkin

2 Q That's all right.

3 Are all managers trained on this
4 procedure?

5 A For the most part, yes.

6 Q Have you been trained on this
7 procedure?

8 A Yes.

9 Q The general managers that you
10 oversee, do you believe as you sit here today
11 that they have been trained on this procedure?

12 A For the most part, yes.

13 Q And are they, as far as you know,
14 and, again, for the purpose of today's
15 conversation, I'm just asking you about what you
16 know, not about the other guy or gal or whomever
17 oversees other regions or other areas throughout
18 the country or whatever.

19 A Okay.

20 Q Do you require your general
21 managers to follow this procedure?

22 A I do.

23 MR. McPARTLAND: Objection
24 to form.

25 Q If a general manager was not

1 Plotkin

2 following this procedure, what would you do?

3 A I would talk to him and sit down
4 probably with someone from HR, because these are
5 procedures that, you know, that come from our
6 human resources department. The genesis of them
7 is always from our human resources department.

8 But there are times where you go
9 out of order in these processes, of course. If
10 one of my employees decided to, excuse the
11 expression, punch a member in the face, we don't
12 give him a verbal warning for that, he's most
13 likely going to be terminated.

14 There's times where we, naturally
15 when the behavior becomes way outside of the
16 norm that we don't take all of these steps into
17 consideration and we might just go directly to
18 termination.

19 Q Have you ever had an employee
20 punch a member in the face?

21 A I have not. I was using it as an
22 example.

23 Q So way outside of the norm. Can
24 you give me examples of behavior that is way
25 outside of the norm where the procedure is not

1 Plotkin

2 followed?

3 A Any violent behavior, any racial
4 slandering, any theft, perhaps abandonment of
5 duties, if someone doesn't show up for work for
6 a week or two, we're not just going to give him
7 a verbal warning, he'll probably be terminated.

8 Q Anything else that you can think
9 of?

10 A Not right now.

11 Q So you have listed violent
12 behavior and this is behavior that you have
13 described as being outside the norm, meaning
14 that you would not normally follow Equinox's
15 procedures, disciplinary procedures, correct?

16 A Correct.

17 Q And you have listed violent
18 behavior, racial slandering, theft and
19 abandonment of duties.

20 Let's start with violent
21 behavior.

22 What do you mean by violent
23 behavior?

24 A In my past, I have had two
25 employees get into a fistfight. Often we work

Plotkin

with --

Q Were they terminated?

A They were.

Q What other examples, if you recall any, of employees that have engaged in violent behavior?

A I have had employees damage, because they can't control their emotions and they get violent, they have damaged equipment in the club from outbursts, violent outbursts.

Q And did that result in termination?

A It did.

Q Any other examples of violent behavior?

A No.

Q How about racial slandering, what do you mean by that?

A We have zero tolerance for any, you know, racial slurs or anything of the norm -- outside the norm, I mean. We just won't tolerate it.

Q What does outside of the norm mean to you?

1 Plotkin

2 A Well, if you use, we don't allow
3 certain words to be used, words I would rather
4 not repeat here, but racial slurs, stuff like
5 that.

6 Q Well, I actually don't know, so
7 you are going to have to tell me.

8 A I am going to have to say those
9 words.

10 The word --

11 MR. McPARTLAND: Note my
12 objection, but you can answer.

13 A The word "nigger," we would
14 never, ever tolerate. Spic, faggot, anything
15 like that.

16 Q And so if someone used these
17 words that you described, would that result in
18 an immediate termination?

19 A Most likely, yes. Unless they
20 worked for us for ten years and they have an
21 impeccable record and it was said as a joke
22 rather than in anger, perhaps they would keep
23 their job on a final warning.

24 Q And so when you use these words
25 that you just described, I take it that you mean

Plotkin

any other examples of words that demean certain categories of people?

A Absolutely.

Q Any categories of people?

A Absolutely.

Q And what about comments related to people's physicality, such as calling someone fat or --

A It's definitely something that we frown upon, we don't accept it, but we might not terminate them for that.

It's not as heinous to us.

Q So these extreme words, I just used that because I'm trying to draw a line between what you are describing as terminology or terms that Equinox says are not acceptable, will terminate an employee for using, right, and other terminology that employees, that Equinox might, for instance, walk someone through the disciplinary procedure that you described.

A If you called someone fat, like you said, I don't think they would get terminated for that, but we would start the disciplinary process.

1 Plotkin

2 Q What about an employee yelling at
3 another employee in the gym in front of clients?

4 A We would at minimum start the
5 disciplinary process. If there is cursing
6 involved, if there is any physical, you know,
7 gestures or aggressiveness, we would get deeper
8 into the disciplinary, we might do a final
9 warning. We might even do, depending, a
10 termination on cursing and yelling and getting
11 in someone's face in front of members on the gym
12 floor.

13 Q I didn't say cursing, I just
14 asked you about yelling.

15 Let's stick with yelling for a
16 second.

17 A Okay.

18 Q If you have two employees who are
19 on the floor in front of members of the gym who
20 are working out and they are yelling at one
21 another, raising their voices so that the
22 members can hear it, would that result in the
23 employees being taken through the disciplinary
24 process or at least having the disciplinary
25 process begun?

1 Plotkin

2 A Yes, most likely.

3 Q Well, as the supervisor of a
4 general manager, would you expect a general
5 manager to begin the disciplinary procedure with
6 respect to those two employees, if that's all
7 you heard?

8 A Yes.

9 Q And then obviously you would want
10 to know more? You would want to know more,
11 right?

12 A Yes.

13 Q With respect to whatever type of
14 discipline, if any, was given to the employee,
15 correct?

16 A Agreed. The details matter.

17 Q But the process would be started?

18 A Yes.

19 Q So the conduct of yelling openly
20 in the gym gives rise to the inference of
21 discipline, correct?

22 A Correct.

23 MR. McPARTLAND: Just note
24 my objection to form.

25 Q Have you terminated anyone or

1 Plotkin

2 been part of a termination of anyone for racial
3 slandering? And I use that phrase because
4 that's the phrase you used.

5 But I think we clearly understand
6 what you mean by that, for the second category?

7 A I don't recall any.

8 Q You don't recall terminating
9 anyone?

10 A No.

11 Q And you do recall terminating --
12 when I say "terminating," I mean either you
13 terminated someone or you worked with a general
14 manager to terminate someone, that's what I mean
15 when I ask you today whether you terminated
16 anyone.

17 A Okay.

18 Q Whether you were a part of the
19 process, whether it involved HR or a general
20 manager, even if you were sort of cc'd on the
21 e-mails for the team, that you were part of it.

22 Do you understand?

23 A I do.

24 Q How about for this first
25 category, violent outbursts, have you terminated

1 Plotkin

2 anyone for violent outbursts?

3 A Yes, I told you I did already.

4 Q Do you recall more than one?

5 You said two employees got in a
6 fight, right, and you terminated them.

7 Any other instances?

8 A There was a time when an employee
9 like punched a window in an emotional outburst
10 many years ago and we terminated him, as well.

11 Q Any other instances?

12 A Not that I can remember.

13 Q This third category, theft, what
14 do you mean by that?

15 A Any taking of actual funds,
16 services, gift cards, other people's property,
17 theft of time, you said you worked, but you
18 didn't, or where you say you did a service, got
19 paid for it and you didn't, for oneself or for
20 others.

21 Q Anything else?

22 A There have been times where we
23 have terminated employees for theft because they
24 incorrectly sold something for the incorrect
25 price and therefore got paid for it.

Plotkin

So if you manipulate pricing or our offers so you can then go ahead and get paid for it and get bonused on it, we are going to go ahead and say that's theft of services and just theft, in general.

Q Can you give me an example of that?

A Sure.

We can have the membership advisor, one of our salespeople who sell memberships, manipulate the system and use gift cards or change the promotion, the monthly promotion, so they could sell more memberships and therefore make more money and not only sell more units, but get paid more for each individual unit because they manipulated our sales, our pricing structure.

Q And have you terminated someone for that?

A Sure.

Q Who did you terminate for that?

A Most recently a membership advisor named Jessica.

Q Jessica. What was Jessica's last

1 Plotkin

2 name?

3 A Last name, names are losing me
4 today.

5 Q When did you terminate Jessica?

6 A About six to eight months ago.
7 I don't remember her last name
8 right now.

9 Q Where did Jessica work?

10 A She worked at our printing house
11 location.

12 Q And what was Jessica's title?

13 A Membership advisor.

14 Q And she was manipulating pricing
15 to give herself an economic advantage?

16 A Correct.

17 Q And anybody else other than
18 Jessica that you terminated for this pricing
19 manipulation?

20 A I was involved in some of them,
21 but didn't do it myself. There was a membership
22 advisor that worked at 85th Street and I found
23 some information on how he was manipulating the
24 system. His name was George. I don't remember
25 his last name.

1 Plotkin

2 Q What role, if any, did you play
3 in overseeing anyone at 85th Street? That is
4 not part of your region, is it?

5 A No, but when you have members
6 come to you and call you up and say, "Hey, I'm
7 supposed to get a free month, an extra referral
8 gift card and two personal training sessions, I
9 want it right now," and then you look into it
10 and you realize that membership advisor had no
11 justification or right to offer those services,
12 then you go to their boss and tell him what you
13 found, and then you help sometimes their boss do
14 research to see what else they have given away
15 and that's how I was involved with that one.

16 Q Have you ever been arrested?

17 A I have.

18 Q Were you arrested more than once?

19 A I have been.

20 Q When was the first time that you
21 were arrested?

22 A It was probably, I believe I was
23 around 18, about 22 years ago. My friends were
24 writing graffiti and I was with them.

25 Q Where were you arrested?

1 Plotkin

2 A In Brooklyn.

3 Q And what were you arrested for,
4 if you know?

5 A I believe graffiti writing.

6 Q And were you charged with
7 anything?

8 A No, it was dismissed.

9 Q So just so that the record is
10 clear, did you plead to anything?

11 MR. McPARTLAND: Note my
12 objection to form, but you can
13 answer.

14 A I don't think so, but I don't
15 exactly remember.

16 Q Did you take an ACD?

17 A I'm sorry?

18 Q Did you take an ACD? Do you know
19 what an ACD is?

20 A I do not.

21 Q But you don't recall whether you
22 pled guilty to anything?

23 A I don't think I did.

24 Q When you say "dismissed," do you
25 have a specific recollection of the charges

1 Plotkin

2 being dismissed against you?

3 A Yes.

4 Q What makes you think that?

5 A I didn't have to do any community
6 service. There was no punishment.

7 Q And did there come a time when
8 you were arrested again?

9 A Yes.

10 Q And when was that?

11 A It was a couple of years after
12 that. I can't recall exactly when. Police
13 officers caught me on the street smoking
14 marijuana.

15 Q And where did that occur?

16 A In Manhattan.

17 Q And you were physically arrested?

18 A I was.

19 Q And were you charged with a
20 crime?

21 A I was charged with a crime, but
22 it was dismissed. There was no punishment
23 involved.

24 Q And when you say "dismissed," do
25 you have any recollection as to why it was

1 Plotkin

2 dismissed?

3 A It's 20 years ago, 22 years ago.

4 I definitely don't remember
5 pleading to it. There was no punishment.

6 I don't remember. Sorry.

7 Q Did you spend time being detained
8 by the NYPD?

9 A Yes.

10 Q For how long?

11 A I went through the system on both
12 occasions.

13 Q So in lower Manhattan, you went
14 through the system in lower Manhattan?

15 A Yes. And the first time the
16 system in Brooklyn.

17 Q And you were arraigned?

18 A I believe so. I went before a
19 judge.

20 Q Was there another time? You
21 mentioned two instances.

22 Was there a third time when you
23 were arrested?

24 A No.

25 Q We talked about arrests and you

1 Plotkin

2 described them.

3 Have you ever been accused of a
4 crime other than what you have mentioned?

5 And I'm not characterizing what
6 you talked about, I'm just asking you that in
7 addition to what you have already testified to,
8 have you ever been accused of a crime?

9 MR. McPARTLAND: Note my
10 objection to form.

11 A Not that I recall, anything else
12 but those.

13 Q Have you ever been fired from a
14 job?

15 A No, I haven't.

16 Q Where did you work before
17 Equinox?

18 A I worked at a company called
19 Aramark, they are a public company. I worked
20 there for three years. I worked from 2003 to
21 2006 and prior to that I worked for Equinox, as
22 well.

23 Q What does Aramark do?

24 A They are managed services, so
25 they do food for colleges and, you know,

1 Plotkin

2 cafeterias.

3 They do the food at Shea Stadium.

4 They do the food at Giants Stadium.

5 I worked in the uniform division,
6 and we did uniforms for companies like General
7 Motors, we did uniforms for NYU, Columbia.

8 Q And then before Aramark, you
9 worked at Equinox?

10 A Correct, since 1995, from 1995 to
11 2003.

12 Q Why did you leave Equinox in
13 2003?

14 A After I believe it was nine years
15 working for the company, it was kind of all I
16 knew and I wanted to experience something else,
17 so I went and I worked for a public company.

18 All I knew was fitness. Before
19 Equinox, I worked for Bally's Jack LaLanne, I
20 wanted to experience something else. I wanted
21 to see what else was out there.

22 Q What position did you take at
23 Aramark?

24 A I started out being a district
25 manager and Manhattan was my district, and then

1 Plotkin

2 I got promoted to be assistant general manager.

3 Q What position did you have at
4 Equinox when you left in 2003?

5 A General manager.

6 Q You were general manager of a
7 club?

8 A Yes.

9 Q Which club?

10 A 19th Street.

11 Q How long were you the GM of 19th
12 Street?

13 A About a year and a half.

14 Q What, if anything, did you do to
15 prepare for today's deposition?

16 A I had a few words with my
17 attorney, he told me what I can expect and
18 that's it.

19 MR. McPARTLAND: You
20 shouldn't discuss anything that I
21 told you.

22 THE WITNESS: All right.

23 MR. McPARTLAND: That's
24 privileged.

25 Q I'm going to agree with your

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attorney in that. I'm not allowed under the rules to ask you about the content you have had with, the content of the conversations that you have had with your lawyers, Mr. McPartland or his associates.

However, I can ask you about other things such as the times that you met with him, not what you talked about, but the times that you met with him and what you looked at and so forth and he will make his objections and we will deal with that in time.

You said that you had some words with Mr. McPartland?

A Correct.

Q To prepare for today's deposition, correct?

A Correct.

Q When is the first time you did that?

A I will say about five months ago.

Q And where did that occur?

A At his office.

Q In lower Manhattan?

A Correct.

1 Plotkin

2 Q And was anyone else present?

3 A I believe he had a paralegal
4 there or another attorney. I can't remember
5 exactly who it was.

6 Q Was it a man or a woman?

7 A A man.

8 Q What do you recall about this
9 man?

10 A Nothing special.

11 Q Do you recall the age,
12 approximately?

13 A Middle age, probably the same age
14 as Pat.

15 Q And was anyone else present?

16 A Not that I can remember.

17 Q Did you review any documents
18 during this meeting five months ago?

19 A I think so. I think we looked at
20 some e-mails.

21 Q Anything else?

22 A Not that I can remember offhand.

23 Q Have you separately retained Mr.
24 McPartland's firm?

25 MR. McPARTLAND: Object to

1 Plotkin

2 the form.

3 Q Are you paying for the legal
4 services?

5 A No, Equinox is.

6 Q And did you sign a separate
7 retainer agreement with Mr. McPartland's firm?

8 A No.

9 Q Has Equinox made any
10 representations to you about liability in this
11 matter?

12 MR. McPARTLAND: Objection.

13 A Be more specific. What does that
14 mean?

15 Q If you are found to be liable in
16 this case and you owe money, is Equinox going to
17 pay that for you?

18 A That has not been discussed with
19 me in any way, shape or form.

20 Q What has been discussed? Again,
21 I'm not asking you about your conversations that
22 you had with your attorneys, but what has been
23 discussed with you about what Equinox is willing
24 to do with respect to representing you in this
25 matter.

1 Plotkin

2 MR. McPARTLAND: Object to
3 the form.

4 And I also, just to advise
5 you, this is, again, no
6 communications between general
7 counsel at Equinox and you,
8 between me, any attorneys, no
9 communications should be
10 disclosed.

11 Just so you are clear.

12 THE WITNESS: Okay.

13 A Ask the question again. I'm
14 sorry.

15 Q What has been conveyed to you by
16 Equinox with respect to Equinox's support of you
17 as a defendant in this action?

18 MR. McPARTLAND: Same
19 objection to form.

20 A Nothing other than -- really
21 nothing, just documents sent to me. We saw the
22 documentation that you sent out, we all got
23 served with it, and just some of my meetings
24 with Pat.

25 Other than that, it's not a big

1 Plotkin
2 talk of the town. We are pretty confident in
3 what we did and we know we did the right thing.

4 MR. HARMAN: Move to
5 strike as not responsive.

6 Q I'm not asking you, all I'm
7 asking you is you are an individual defendant in
8 this case.

9 Do you understand that?

10 A I do.

11 Q And that you are not a defendant
12 as an employee of a corporation.

13 Do you understand that?

14 A I thought I was both.

15 Q The corporation has been sued,
16 right, and you have also been sued in your
17 individual capacity.

18 I have asked you that now three
19 or four times. Do you understand that?

20 A I do.

21 Q And do you understand that you
22 could be found to be responsible legally for
23 something in your individual capacity?

24 A I believe that could happen, but
25 I don't believe it will.

1 Plotkin

2 Q I'm not asking you to speculate,
3 I'm asking if you understand legally what's
4 going on right now?

5 A I do.

6 Q Then I ask you what
7 representations, if any, have been made to you
8 by Equinox about your individual liability in
9 this matter?

10 MR. McPARTLAND: Other
11 than by counsel.

12 A Nothing other than by counsel.

13 Q Nothing?

14 A Yes.

15 Q Have you ever been sued by Chase
16 Bank?

17 A Have I ever been sued by Chase
18 Bank?

19 Not that I know of.

20 Q Have you ever had a dispute with
21 Chase Bank?

22 A I have.

23 Q Involving money?

24 A I have.

25 Q And that was resolved?

1 Plotkin

2 A Yes, it was.

3 Q And if I told you that there is a
4 record of a proceeding in Richmond County
5 involving you and Chase Bank, would that refresh
6 your recollection as to whether you had been
7 sued involving Chase Bank?

8 A No, it wouldn't.

9 Q But you did have a dispute with
10 Chase Bank?

11 A I did. It did not, it never went
12 to the courts.

13 Q And did that dispute involve an
14 amount of money in five figures?

15 A Yes, it did, but it was paid
16 back.

17 Q Did it involve an amount of
18 approximately \$26,000?

19 A Yes, it did. But it was paid
20 back in full.

21 Q You described, when I asked you
22 about theft, the first thing you said is the
23 taking of actual funds, and you emphasized the
24 word "actual."

25 Do you recall that?

1 Plotkin

2 A I do.

3 Q Do you agree with me that you
4 emphasized the word "actual"?

5 A I do.

6 Q Why did you do that?

7 A Because sometimes theft is
8 defined as someone actually taking money out of
9 a safe and then sometimes it's taking funds via
10 other resources, so it's two different types of
11 theft.

12 Q Do both types of theft result in
13 termination at Equinox?

14 A Yes.

15 Q So whether it's taking actual
16 funds, money out of the safe, or whether it's
17 taking something through manipulating the
18 system?

19 A Correct.

20 Q And both types of theft result in
21 termination?

22 A Yeah. Yes.

23 Q In every single instance?

24 A I can't remember an instance
25 right now where it didn't.

1 Plotkin

2 Q Tell me every time you have
3 terminated someone for theft.

4 A I'll do my best to recite all of
5 this.

6 Q Let's talk about the most recent
7 ones in time, sometimes it's easier to say let's
8 look at the last three years or five years
9 because our recollections are fresher during
10 those periods of time.

11 So let's talk about the last five
12 years.

13 A Okay.

14 I told you about the time with
15 the membership advisor, Jessica.

16 Q And you characterized that as
17 theft?

18 A Yes.

19 Q And how much money was involved
20 in that?

21 A A couple of thousand dollars.

22 Q 2,000 --

23 A About 2,000.

24 Q -- or more than 10,000?

25 A About 2,000.

1 Plotkin

2 Q Okay.

3 And tell me about the second one.

4 A They are popping into my head, so
5 I can't do it in any real time order, but we let
6 a general manager go who was actually taking
7 money out of the safe.

8 Q And what location was that?

9 A The 19th Street location.

10 Q What was the individual's name?

11 A Leo Perez.

12 Q And how did you catch Mr. Perez
13 taking money from a cash register?

14 A It was pretty cut and dry. It
15 was actually out of a safe.

16 He wasn't depositing the money
17 into the bank, he was depositing it into his own
18 pocket and accounting called me up and my boss
19 up and said, "We are missing a lot of money on a
20 weekly basis. What's going on?"

21 And when we spoke to him he
22 admitted to taking the money.

23 Q How much money?

24 A I don't remember exactly, but,
25 again, it probably added up to be two or \$3,000.

1 Plotkin

2 Q When did this occur?

3 A Probably about three to four
4 years ago.

5 Q Did he return the money?

6 A I don't believe so.

7 Q Did you call the police?

8 A I believe my boss did.

9 Q I take it Mr. Perez was
10 terminated?

11 A Yes.

12 Q Any other instances in which
13 employees were terminated for theft?

14 A Just give me a minute so I can
15 recollect.

16 We had a number of maintenance
17 associates, I don't remember their names, caught
18 stealing an iPod here or there from another
19 employee and/or a member.

20 Q Anything else?

21 A Sure.

22 I have had a personal training
23 manager get caught for not properly handling
24 voucher pulling, so when vouchers would be, when
25 they would expire, he was going ahead and paying

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Plotkin

the trainers for them and then getting credit
for those sessions towards his bonus. That was
a very long time ago.

Q These maintenance individuals, do
you recall any of their names?

A I don't.

Q Location?

A One at Soho, one at Greenwich.

Q These are maintenance employees?

A That's correct.

Q Not managers?

A Correct.

Q And then you had a personal
training manager who was improperly pulling
vouchers?

A Correct. And he was getting
credit for them for his bonus and then paying
the trainers on them, so they were getting paid
for services that they weren't providing.

Q And you said this was a very long
time ago?

A Yeah. That was a good eight to
ten years ago.

Q And do you recall the

Plotkin

individual's name?

A Adam Cronin.

Q Was Adam terminated?

A Yes, he was.

Q How do you spell Adam's last
name?

A C-R-O-N-I-N.

Q What location did Adam work at?

A Greenwich.

Then there was a maintenance
manager who was terminating employees, but
leaving them on payroll, paying them hours on
their checks and then using the former employee
to cash the checks and keep the money for
himself.

Q What location was that?

A Greenwich.

Q The individual's name?

A Giovanni Iboquinto.

Q Any other instances of employee
theft?

A Let me search through my mind.

That's all I can remember right
now. And then naturally -- I'm sorry, naturally

1 Plotkin

2 the situation with Kerry Ashdown.

3 Q When you say "Ashdown," do you
4 know mean Ashdown?

5 A I do.

6 Q When you say "naturally," what
7 does that mean?

8 A That means that's what we are
9 here for right now.

10 Q I'm not sure what you mean by
11 that.

12 A That's why we terminated Kerry.

13 Q You terminated Ms. Ashdown for
14 theft?

15 A That is correct.

16 Q Do you believe that she stole
17 from Equinox?

18 A 100 percent.

19 Q And why do you believe that?

20 A Because she pulled vouchers for
21 herself and for other employees using her
22 computer, her log-in to get on the computer, her
23 cashier code to pull those vouchers and to
24 reinstate them at a time that we know she was
25 next to or in her office and there is nobody

1 Plotkin

2 else that could have done it other than her.

3 Q So you said that you know that
4 she was in her office.

5 How do you know that?

6 A We knew she was in or near her
7 office.

8 Q How do you know she was in or
9 near her office?

10 A We saw her walking in that
11 direction one to two minutes before those
12 vouchers were reinstated and pulled.

13 Q When you say "we," did you
14 physically see her, you physically saw her one
15 to two minutes before the vouchers were pulled?

16 A Myself and Lawrence Sanders saw
17 her on a camera walking towards her office one
18 to two minutes prior to when those vouchers were
19 pulled.

20 So even if she didn't pull them,
21 she would have seen someone in her office for a
22 considerable amount of time pulling them.

23 Q So you are testifying that you
24 and Mr. Sanders saw her on a camera?

25 A That's correct.

1 Plotkin

2 Q Where did that occur?

3 A In his office.

4 Q And when you say no one else
5 could have done that, what do you mean by that?

6 A I mean it was her computer, in
7 her office, her log-in code, her cashier code,
8 at her desk, at the time she was in the
9 vicinity.

10 No one else there would have
11 known how to do it and if they did do it, she
12 would have seen them do it, and when we spoke to
13 her, she said she didn't see someone at her
14 computer during that time period.

15 Q How do you know that it was at
16 her desk?

17 A IT sends us a report about when
18 the vouchers are pulled, what actual terminal
19 it's done in, what cashier codes are used.

20 Q So you had a report that showed
21 that the sessions were pulled at Ms. Ashdown's
22 actual desk?

23 A At her actual terminal, correct,
24 I had that.

25 Q Has that report been produced in

Plotkin

this action?

A I believe so.

Q I'm asking you.

A I believe so.

Q So as part of your basis for terminating her, you concluded that the sessions had been pulled at her actual desk?

A They were reinstated and pulled at her actual desk, correct.

Q You know that for a fact?

A Yes, and using her cashier code.

Q Now, you testified that you looked on a camera and that you saw what on a camera?

A I saw her walking toward her office.

Q Yeah, you saw her walking toward her office?

A A couple of minutes before these sessions were reinstated and pulled.

Q So tell me what else you saw.

A That's all we saw on the camera. It was -- there were members around, naturally, but our whole thought process was if Kerry

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Plotkin

didn't do it, who did do it, and if there was someone in her office doing this, using her codes to pull and reinstate these vouchers, it would have taken a considerable amount of time and she would have seen them do it. The office is all glass.

So if she was anywhere in the vicinity, she would have saw this. When we asked her about it, she would have said, "Oh, my God, Doug was in my office at that time."

She told us she didn't know, nobody was in her office. And it just didn't make sense. The only thing that actually made sense and all the facts pointed to was that she did it.

Q I see. Now, was anybody else in the office?

A Not that I know of, no, not at that time.

Q How do you know that?

A That's what Ms. Ashdown told us.

Q So Ms. Ashdown told you that no one else was in the office?

A Uh-hum.

Plotkin

Q You asked her about that specific time?

A Sure.

Q You did?

A Sure.

Q Did you show her the video?

A I don't believe we showed her the video.

Q And you recall as you sit here today under oath asking her if she was in her office at a specific time?

A Yes, absolutely.

Q Did you ask her if anybody else was in the office?

A Yes.

Q And what was your recollection of her response?

A She said, "No one was in my office. I wasn't in my office, but I was around my office. I might have popped in or out, but I wasn't in there for any considerable amount of time."

Q And you are testifying today that you were watching a camera at that time of her

1 Plotkin

2 office?

3 A No, I'm testifying today that I
4 saw her walking toward her office in the camera
5 at about that time.

6 Q Is there a camera -- what camera
7 are you talking about?

8 A There is a camera in the hallway
9 that leads to her office. It does not point
10 inside her office.

11 Q Oh, I see.

12 So there is a camera that is in a
13 hallway that leads to her office?

14 A That's correct.

15 Q And you looked at that camera?

16 A Yes.

17 Q Have you spoken to Mr. Sanders
18 about this lawsuit?

19 A We have made it a point not to.

20 Q Have you spoken to Mr. Sanders
21 about this lawsuit? Yes or no.

22 A No.

23 Q Have you read any transcripts of
24 any deposition testimony in this lawsuit?

25 A No.

1 Plotkin

2 Q Have you read the complaint in
3 this lawsuit?

4 A What is that?

5 Q The legal document that names you
6 as a defendant?

7 A Yes, I have.

8 Q So it's your testimony today that
9 you looked at a camera of Ms. Ashdown going down
10 a hallway?

11 A That's part of it. The other
12 part of it is it was her cashier code in her
13 office and her --

14 Q Please just answer my questions,
15 okay?

16 A I am.

17 Q Then answer them.

18 It's your testimony that you saw
19 Ms. Ashdown walking down a hallway in a camera?

20 A That is part of it, yes.

21 Q Yes or no, did you see
22 Ms. Ashdown walking down a hallway on a camera?

23 A Yes.

24 Q And where is this camera exactly
25 located?

1 Plotkin

2 A The camera -- I'm not exactly
3 sure. We have multiple cameras in the club.
4 None of them are pointing in the office.

5 Q Just answer the question.

6 So you don't know where the
7 camera is located?

8 A The exact location, I do not
9 know.

10 MR. HARMAN: How long do
11 you have today?

12 MR. McPARTLAND: We are
13 here to finish Mr. Plotkin's
14 deposition one or another.

15 MR. HARMAN: Okay, so a
16 full seven hours.

17 Let's take a break then.

18 MR. McPARTLAND: Mr.
19 Plotkin does have a meeting that
20 he would like to make at 1:00 --

21 MR. HARMAN: If you want
22 to come back --

23 MR. McPARTLAND: -- but we
24 are not coming back, so we are
25 here to finish today.

1 Plotkin

2 (Whereupon, at 11:28 a.m., a
3 recess was taken.)

4 (Whereupon, at 11:41 a.m.,
5 the deposition resumed with all
6 parties present.)

7 BY MR. HARMAN:

8 Q Mr. Plotkin, you said that you
9 made a point not to talk Mr. Sanders about this
10 lawsuit.

11 Did you have that agreement with
12 him?

13 A I think, I wouldn't say an
14 agreement, I think we in passing, we were just
15 like we can't talk about it, you know. It
16 wasn't a handshake or an agreement, per se.

17 Q When is the last time that you
18 had that type of interaction with him?

19 A I think a couple of days before
20 we were supposed to have the deposition and it
21 was canceled.

22 Q And what did you say to him?

23 A I don't remember exactly. It's
24 probably like, he asked me if I can be somewhere
25 at a specific time, and I said, "No, I have a

1 Plotkin

2 deposition, but we can't talk about it," and
3 that was it.

4 Q And how long ago would you say
5 that was?

6 A I don't know. A month, perhaps.

7 Q And what did he say to you?

8 A I think he just nodded his head.

9 Q So this was a conversation in
10 person?

11 A Yes.

12 Q And what other interactions have
13 you had with him about this lawsuit?

14 A I believe when we first got
15 served the papers, we discussed it, and then
16 after that pretty much didn't discuss it much.

17 Q When you say "pretty much didn't
18 discuss it much," what does that mean?

19 A I don't recall any other time
20 that we discussed it.

21 Q You recall no other discussing
22 this lawsuit once you got served with the
23 complaint?

24 A After our initial discussion
25 about it, naturally we were like "What is this?"

1 Plotkin

2 We were perplexed by it, and we have not had any
3 conversations since other than, "Oh, yeah, we
4 can't talk about it."

5 Q So you had an initial discussion
6 where you were perplexed by it?

7 A Yes.

8 Q Can you tell me about that?

9 A Yeah. Like what?

10 Q Where did this discussion take
11 place?

12 A I think it was in his office in
13 Soho.

14 Q Was anyone else present?

15 A No.

16 Q And approximately when did this
17 conversation take place?

18 A I'm not exactly sure. It was
19 right after we got served the papers, so I guess
20 six, eight months ago.

21 Q When you say when papers were
22 delivered to the Soho location, is that what you
23 mean by served?

24 A Yes.

25 Q And you had a conversation in Mr.

Plotkin

Sanders' office?

A Yes.

Q What did you say to him?

A I believe -- I'll paraphrase.

Q I don't want you to paraphrase, I want you to tell me what you said to him.

A Then I don't remember exactly what I said.

Q Okay. Then tell me what you recall about the conversation.

A I recall us being perplexed and being "What are we getting sued for? Kerry stole from us. Why would she then go ahead and sue us. It makes absolutely no sense.

"She was dishonest and now she's going ahead and being dishonest again."

We couldn't believe that she couldn't let it rest and learn from her mistakes and move on.

Q Are these things that you said to Mr. Sanders?

A Paraphrased, yes.

Q And what did he say to you?

A He was perplexed, as well and

1 Plotkin
2 scratching his head. Usually when you get
3 caught stealing, you don't go ahead and sue for
4 your mistake.

5 So he was perplexed about it, I
6 don't remember exactly what he said, but it was
7 in and around the comments that I just made to
8 you.

9 Q So I take it from your testimony
10 that you believe that Ms. Ashdown stole from
11 Equinox?

12 A I do.

13 Q And that she was dishonest?

14 A I do.

15 Q And what did she steal from
16 Equinox?

17 A She reinstated and pulled
18 vouchers for herself and for other trainers and
19 then was not honest about it when we asked her
20 about it.

21 Q And how much money would this
22 have benefited her, this alleged stealing?

23 A I don't recall exactly, but it
24 was somewhere, a hundred bucks, somewhere around
25 there, for her, and then probably a hundred or a

1 Plotkin

2 couple of hundred bucks for I believe the two
3 trainers that she pulled vouchers for.

4 Q And would you place Ms. Ashdown's
5 conduct in the category that you mentioned
6 earlier, the theft category?

7 A Yes, I would.

8 Q And that requires a termination,
9 correct?

10 A In most cases, absolutely.

11 Q Give me an example where it
12 wouldn't require immediate termination.

13 A Let's say if she stole a pen a
14 she said, "I'm sorry, I took a pen home."

15 Q Give me another example.

16 A Perhaps a bottle of water. But
17 in this case she stole services, benefitted for
18 herself, the trainers that she was close with
19 benefitted from it, and then she wasn't honest
20 about it.

21 Q What would have happened if she
22 had been honest about it?

23 I'm asking questions based on
24 your allegations. You alleged that she stole
25 something?

1 Plotkin

2 A Uh-hum.

3 Q If she, in fact, had stolen
4 something, according to you, and she had been
5 honest about it, what would have happened?

6 A You know, it depends. If she
7 said, "Oh, my God, I didn't realize I couldn't
8 do this, I was just trying to help out these
9 trainers and they were going to render services
10 anyway and so was I, we just all needed the
11 money, but I promise we are going to render
12 services and we're never going to do it again,"
13 it might have been a different conversation, we
14 definitely would have documented it and given
15 her a final warning, but maybe we would not have
16 terminated her.

17 Q Well, this situation involved
18 expired sessions, right?

19 A Uh-hum.

20 Q Can expired sessions be
21 performed?

22 A What happens with expired
23 sessions is the member would call us up and say,
24 "Listen, my sessions expired, can you reinstate
25 them?"

1 Plotkin

2 Then we would reinstate them for
3 the member and then they have a certain amount
4 of time again to go ahead and use them. So it
5 is our practice to reinstate expired sessions
6 for members.

7 Q So if this was a pen or a bottle
8 of water, it would have been a different
9 conversation?

10 A Yeah.

11 Q Was that because it was sessions
12 you believed that it was an offense that
13 required termination?

14 A Along with the lying, absolutely.

15 Q And you believe that she lied
16 about the session pulling?

17 A Absolutely.

18 Q Did you conduct an investigation
19 into Ms. Ashdown?

20 A Yes. A group of us did.

21 Q Who was in that group?

22 A Lawrence Sanders, myself, and
23 then conversations around it. Discussing it was
24 Elizabeth Minton, Joe Matarazzo and David
25 Harris.

1 Plotkin

2 Q So you and Sanders conducted the
3 investigation and Minton, Matarazzo and Harris
4 had conversations around it?

5 A That's correct.

6 And I believe Elizabeth Minton
7 helped out with some of the investigation.

8 Q How did she help out?

9 A She spoke to some other employees
10 about it, she looked at the IT-generated report,
11 which showed the reinstatement and the pulling
12 of sessions for the benefit of Ms. Ashdown and
13 the other trainers.

14 Q So is your testimony that if
15 Ms. Ashdown had been, assuming what you are
16 saying is true regarding Ms. Ashdown, that if
17 Ms. Ashdown had been honest about it, it might
18 have been a different conversation?

19 A It might have been. I'm not
20 sure.

21 Q What makes you not sure?

22 A It depends what her reasoning
23 was, her thinking, as to why she thought she
24 could conduct such behavior.

25 Q And you believe she wanted to

1 Plotkin

2 steal money from Equinox?

3 A I do.

4 Q You believe she actively stole
5 money from Equinox?

6 A I do.

7 Q You believe that she was
8 dishonest about it?

9 A Absolutely.

10 Q Did you call the police?

11 A No, we did not.

12 Q Did Mr. Sanders call the police?

13 A I do not think so.

14 Q What else did you do?

15 You said you conducted an
16 investigation with Mr. Sanders?

17 A Correct.

18 Q Tell me about that investigation.
19 When did that start?

20 A I don't know the exact date.
21 Lawrence brought it to my attention maybe a week
22 after the vouchers were pulled, a week or two
23 after the vouchers were pulled, and we started
24 looking at it.

25 He tried to have a conversation

1 Plotkin

2 with her about it.

3 She said, "I didn't do anything,
4 I don't know what happened." She was very
5 defensive. She didn't help in the
6 investigation, which was very telling to us
7 since it did happen in her office, at her
8 computer, with her cashier code, with her log-in
9 code and it did get her paid, we were very
10 suspicious as to why she didn't help in the
11 investigation, why she didn't volunteer in any
12 way, shape or form to help.

13 So Lawrence headed up talking to
14 employees about it to see if certain employees
15 were around the office that day. We both looked
16 at the videotape together.

17 We spoke to both employees, other
18 than Mrs. Ashdown that the vouchers were pulled
19 for, and both of them claimed they didn't know
20 anything about it, but yet they got overpaid and
21 they didn't question it. When they get
22 underpaid, they very much question it.

23 Lawrence and I had IT pull the
24 report to show when the vouchers were pulled,
25 who pulled them, at what terminal they were

1 Plotkin

2 pulled, and we looked at that in detail.

3 We shared it with the rest of the
4 group, David, Liz, Joe, myself and Lawrence. We
5 went to have one more sit-down with Kerry where
6 she told us she knew nothing about it, she was
7 defensive again and she didn't step up and say,
8 "Let me help you with the investigation." She
9 didn't look into the matter at all, knowing that
10 someone might have pulled vouchers and
11 reinstated them at her desk, using her code, at
12 her terminal, and she didn't even try to find
13 out who did it, led me and the group to believe
14 along with the, you know, very, very concrete
15 evidence on the report that IT provided for us
16 that Kerry did this and now she was lying about
17 it, and it's not an insane amount of money, so
18 we couldn't figure it out.

19 Q It's your testimony that
20 Ms. Ashdown, that you know for a fact that
21 Ms. Ashdown didn't do anything whatsoever to
22 investigate these allegations?

23 A If she did, she didn't tell us
24 about it.

25 Q She didn't tell you about it?

1 Plotkin

2 A Uh-hum.

3 Q Okay.

4 And did she tell you that she
5 believed Mr. Maietta was responsible?

6 A Mauro. Not until we were
7 terminating her.

8 My recollection is --

9 Q So your testimony is she didn't
10 tell you that until you were terminating her?

11 A That is my recollection, yes.

12 Q Did anyone else tell you that she
13 believed Mr. Maietta was involved?

14 A Lawrence might have told me
15 that --

16 Q Prior to her termination or --

17 MR. McPARTLAND: Can you
18 let him finish his answer?

19 A I don't remember.

20 Q Did you investigate Mr. Maietta?

21 A He wasn't there that day when all
22 the vouchers were pulled.

23 Q He wasn't there that day?

24 A No. He was nowhere, he wasn't in
25 the building.

1 Plotkin

2 Q How do you know that?

3 A We checked the tape, we checked
4 his e-mails. He was nowhere in the building.

5 Q When you say you checked the
6 tape, what does that mean?

7 A We looked at the camera.

8 Q When you say you looked at the
9 camera, what does that mean?

10 A That means you can see people on
11 the camera, they are easily identifiable.

12 We saw Kerry there that day, she
13 was on schedule to work. It was Mauro's day off
14 and he was not in the building. We did not see
15 him on the camera.

16 Q So I take it that you looked, I
17 take it that you looked at some video footage
18 with Mr. Sanders.

19 That's your testimony?

20 A It is.

21 Q How long a time did you spend
22 looking at video footage?

23 A I don't remember. It was
24 probably -- I don't remember exactly.

25 Q Would you say it was more than 15

Plotkin

minutes?

A Yes.

Q Would you say it was more than 30 minutes?

A Probably.

Q Was it more than an hour?

A Probably not.

Q So you think it was probably not more than an hour?

A Uh-hum.

Q And you looked at this video footage in Mr. Sanders' office?

A Yes.

Q And can you describe to me how you looked at this video footage?

A We sat in front of the monitor and we used the rewind and fast forward button a lot to speed up the process.

We identified her walking towards the vicinity of her office during the time when the sessions were reinstated and pulled and we did not see Mauro on the camera at all.

Q And you did not see Mauro on the camera at the same time that you saw

1 Plotkin

2 Ms. Ashdown, that's your testimony?

3 A That is my testimony.

4 Q And did you look at, you have
5 testified to looking at a camera.

6 Did you look at just one camera?

7 A I believe we only looked at one
8 camera.

9 Q So it's your testimony that you
10 looked at one camera, and you spent less than a
11 hour doing this?

12 A I think so.

13 Q And it's also your testimony that
14 you looked at Mr. Maietta's, Mauro's e-mails?

15 A I believe so.

16 MR. HARMAN: I'm going to
17 call for the production of Mauro
18 Maietta's e-mail communications
19 for the day that his e-mails were
20 reviewed by Mr. Plotkin as part
21 of his investigation.

22 MR. McPARTLAND: We will
23 take it under advisement.

24 Please put it in writing.
25 That applies for all requests.

Plotkin

BY MR. HARMAN:

Q Did you maintain a copy of whatever it is that you reviewed that day in Mr. Sanders' office?

MR. McPARTLAND: Object to the form.

A I don't remember.

Q Did Ms. Ashdown volunteer to give a lie detector test with respect to these allegations of theft?

A I believe at her termination she did.

Q You believe at her termination?

A Uh-hum.

Q And what was your response? Can you tell me what she said?

A I don't remember exactly. I remember her saying, she was emotional at the time, "Give me a lie detector test," but at that point the investigation was already finished. We don't do lie detector tests, it's just not a process that we use.

And to us it didn't matter, everything pointed at Kerry. It just didn't

1 Plotkin

2 matter.

3 Q So just so the record is clear,
4 the fact that Ms. Ashdown had volunteered to
5 take a lie detector test didn't matter to you?

6 A At her termination, after she
7 didn't help us with the investigation.

8 If she maybe had said it when we
9 first brought it up to her, maybe we would have
10 considered it, I don't know, I would have
11 brought it to HR, human resources, "Is this
12 something that we can do?"

13 But after she didn't help us with
14 the investigation at all, it just didn't seem
15 right.

16 Q Let me ask, did you sit down with
17 Ms. Ashdown and ask her to do anything with
18 respect to this investigation?

19 A I believe we did.

20 Q I'm not asking about what you
21 believe, I'm asking what you recall.

22 Tell me exactly what you told
23 Ms. Ashdown to do with respect --

24 A I can't recall.

25 Q You can't recall anything?

1 Plotkin

2 A I can't.

3 Q So then it's fair to say that you
4 have no idea what she did or didn't do?

5 A Well --

6 MR. McPARTLAND: Object to
7 the form.

8 A Her supervisor told me that she
9 didn't do anything, that he followed up with her
10 and said, "Did you think about this? What's
11 going on?"

12 Q I'm not asking you about that.
13 I'm asking you, you and Mr. Sanders conducted an
14 investigation?

15 A Uh-hum.

16 Q You have told me elaborately and
17 repeatedly that she didn't do anything
18 whatsoever.

19 I now just asked you what you
20 asked her to do and you said you can't recall a
21 single thing. Okay?

22 So my next question to you then
23 is, if you didn't ask her, if you can't recall a
24 single thing that you asked her to do, how is it
25 that you possibly could know personally that she

1 Plotkin

2 didn't do anything?

3 A Because I asked her, "What have
4 you done?"

5 I didn't ask her to do anything.

6 I asked her what --

7 Q I see, you asked her what she
8 did.

9 A Yes.

10 Q And what did she say?

11 A She said nothing.

12 Q She told you she did nothing?

13 A Yeah.

14 Q When did this conversation take
15 place?

16 A It was after -- it was my first
17 conversation with her in and around, when we
18 found out about these sessions that were pulled
19 and reinstated and, you know, she denied it
20 again, she said she didn't do anything looking
21 into them, so that's what I remember.

22 Q Where did this conversation take
23 place?

24 A In Mr. Sanders' office.

25 Q Who was present?

1 Plotkin

2 A Me and Lawrence.

3 Q And what did you say to her?

4 A Again, I'll paraphrase. I asked
5 her first point blank, "Did you reinstate and
6 pull these sessions?" She denied it.

7 And then I said, "What have you
8 done to investigate it or to figure out what did
9 happen."

10 She said, "Nothing." She said,
11 "I haven't done anything."

12 Q When was this conversation? How
13 long after Mr. Sanders brought this to your
14 attention did this conversation take place?

15 A A week or two.

16 Q And what was your response, if
17 any, to Ms. Ashdown's comment that she did
18 nothing?

19 A I don't remember exactly.

20 Q Did you ask her to do anything?

21 A I don't remember exactly. I do
22 not believe so.

23 Q Does Equinox have a policy that
24 the employee is supposed to conduct an
25 investigation of any incidents that they are

1 Plotkin

2 involved in?

3 A No, we do not.

4 Q Mr. Sanders was accused of making
5 an inappropriate comment of a sexual nature; is
6 that correct?

7 MR. McPARTLAND: I am
8 going to object to the form.

9 A That is correct.

10 Q And who accused him of that?

11 A At the time it was his group
12 fitness manager.

13 Q And what's her name?

14 A You have to excuse me with names.
15 I have over 1,000 employees.

16 I don't remember her name.

17 Q And was he investigated as part
18 of that accusation?

19 A Yes, he was.

20 Q And who investigated him?

21 A I did, along with human
22 resources.

23 Q And who at HR?

24 A I believe it was Matthew Herbert.

25 Q And did Mr. Sanders conduct his

1 Plotkin

2 own investigation of that incident?

3 A He didn't have to.

4 Q I'm just asking, if you just tell
5 me yes or no.

6 Did he or did he not conduct his
7 own investigation?

8 Yes or no.

9 A He admitted to it. Why would he
10 have to investigate something he was honest
11 about?

12 Q What did he admit to?

13 A He stepped out of the boundaries
14 of appropriate business language with one of his
15 employees.

16 Q How did he do that?

17 A I don't remember exactly what he
18 said, but it was inappropriate, it was
19 documented and he was given a warning that that
20 can never happen again.

21 Q How about with respect to these
22 other employees?

23 Were other employees involved in
24 the Ashdown voucher pulling investigation?

25 MR. McPARTLAND: Object to

1 Plotkin

2 the form.

3 A I don't remember. I don't
4 remember. I do recall there was another
5 employee where Kerry knew her code, I don't
6 remember her name, and used her code to pull
7 some of those vouchers.

8 Q How do you know that Kerry knew
9 her code?

10 A Kerry admitted to it.

11 Q When did Kerry admit to knowing
12 someone's code?

13 A I don't recall exactly. I
14 believe when we sat down with her, in our first
15 conversation with her.

16 Q And what did you say to her and
17 what did she say to you?

18 A I don't remember exactly. Sorry,
19 I can't recall.

20 Q How did this come up?

21 A There was a number of vouchers
22 that were pulled by Kerry's code, if I can
23 remember correctly, and there were a couple of
24 vouchers that were pulled by using this other
25 employee's code.

1 Plotkin

2 Q Did Kerry admit to pulling the
3 sessions involving the other employee's code?

4 A I do not believe so.

5 Q But it's your recollection that
6 Kerry, and I guess we'll just use first names,
7 it seems more comfortable to you, and that's
8 fine with me.

9 Did Kerry admit to using the
10 other employee's code?

11 A I do not believe so. I just
12 believe that she admitted to knowing it.

13 Q Is there anything wrong with
14 knowing someone's code?

15 A Yeah.

16 Q Why?

17 A Your code is generally for you.
18 You shouldn't necessarily know and use someone
19 else's code. In certain examples --

20 Q Move to strike.

21 I didn't, I asked you if she
22 admitted to knowing someone's code and you said
23 yes. I asked you if she admitted to using the
24 code.

25 A I do not believe she admitted

1 Plotkin

2 that.

3 Q How would Ms. Ashdown have been
4 given her code?

5 A Back then I don't recall. Either
6 it would go through, either she would get an
7 e-mail with it or sometimes it does go through
8 your supervisor.

9 Q So your supervisor could give you
10 a code?

11 A Yes.

12 Q And how would that happen, would
13 it be physically written on a piece of paper or
14 would it be printed out in some way?

15 A It could be, if that person took
16 the liberty of taking it off of an e-mail and
17 writing on it and handing it to someone else, I
18 guess it could happen like that.

19 Q If it happened like that, would
20 that be against Equinox's policy?

21 A I'm not sure. I'm not sure.

22 Q Have you ever done that?

23 A I have not.

24 Q Do you have a code?

25 A I do.

1 Plotkin

2 Q Did you ever share it with
3 anyone?

4 A No.

5 Q Have you ever let anyone use it?

6 A My cashier code?

7 No.

8 Q And are you aware of anyone else
9 sharing codes?

10 A It has happened.

11 Q And have people been terminated
12 for sharing codes?

13 A They have.

14 Q Who has been terminated for
15 sharing codes?

16 A I can't remember offhand, but I
17 know it's happened.

18 Q How do you know it's happened?

19 A I just remember it happening. I
20 don't remember the exact example.

21 Q Do you remember any details?

22 A No.

23 Q Not a single one?

24 A Give me a minute.

25 I can't recall right now. I'm

1 Plotkin

2 sorry.

3 Q Did you escort Ms. Ashdown out of
4 the Soho location?

5 A I don't remember if it was me or
6 Lawrence, but probably one of us did.

7 Q When you say "probably," why do
8 you say that?

9 A Because we usually do that.

10 Q You usually do what?

11 A We usually would escort a
12 terminated employee, walk them to the door, make
13 sure they get all their stuff and walk them to
14 the door.

15 Q You don't have any recollection
16 of physically walking Ms. Ashdown out of the
17 Soho location?

18 A I don't. I don't.

19 Q Do you have a recollection of
20 walking anyone out of a location to terminate
21 them?

22 A Yeah.

23 Q When?

24 A Let's see. Recently I did it
25 with a maintenance manager that got terminated

1 Plotkin

2 for poor performance, I brought him to his
3 locker, he emptied his locker, and then I showed
4 him to the door respectfully.

5 Q How did you do that respectfully?

6 A Just said, "Good luck to you,
7 you're a good person. I wish you all the luck
8 in the world."

9 Q Do you believe that Ms. Ashdown
10 was escorted out of the Soho location in a
11 respectful manner?

12 A I do.

13 Q Why do you believe that?

14 A Because that's generally how we
15 conduct ourselves.

16 Q So it's based on a general
17 belief, you don't have any specific
18 recollection?

19 A I don't.

20 Q You don't know who walked her
21 out?

22 A I forgot.

23 Q Did you tell Ms. Ashdown that she
24 could come back as a personal trainer?

25 A I didn't, but we made a

1 Plotkin

2 decision --

3 Q Just please answer the question.

4 A I didn't.

5 Q Was Ms. Ashdown told that she
6 could come back as a personal trainer?

7 A Yes.

8 Q Who told her that?

9 A I believe Lawrence, but possibly
10 Liz Minton told her that. I'm not sure.

11 Q Why do you believe that Lawrence
12 told her that?

13 A Because I believe they spoke
14 after the termination. I'm not sure.

15 Q And did you work closely with
16 Lawrence on the investigation?

17 A Yeah.

18 Q And did you agree with him on
19 every aspect of the investigation?

20 A Yes.

21 Q And did you disagree with
22 Lawrence on any aspect of the investigation?

23 A Not that I can remember.

24 Q And what was the conclusion of
25 the investigation?

1 Plotkin

2 A The conclusion of the
3 investigation was that Kerry was dishonest, that
4 she reinstated and pulled those sessions for her
5 benefit, as well as other trainers' benefits.

6 Q Who recommended first termination
7 of Ms. Ashdown?

8 A I don't remember exactly. I
9 think we all agreed to it.

10 Q Did you have private discussions
11 with Lawrence about what you should do with
12 Ms. Ashdown?

13 A I don't remember any.

14 Q But you sat in an office looking
15 at a camera with him, right?

16 A That is correct.

17 Q And you looked at some e-mails
18 and you had some discussions about Ms. Ashdown?

19 A Uh-hum.

20 Q And then you met with her, right?

21 A Uh-hum.

22 Q How many times did you meet with
23 her?

24 A Just once.

25 Q So you just met with her once.

1 Plotkin

2 And after that meeting, did you
3 make a decision to terminate her?

4 A No. We all got on a conference
5 call together, discussed it, and we all made the
6 determination that it was the right thing to do.

7 Q And who terminated her?

8 A Myself and Lawrence.

9 Q And that was done where?

10 A In Lawrence's office.

11 Q Was she allowed to get her
12 things?

13 A I believe so.

14 Q Did the termination cause her to
15 be emotionally upset?

16 A I do remember her being
17 emotional.

18 Q Do you recall her tearing up?

19 A Yes.

20 Q And she was escorted out that
21 day?

22 A I believe so. I don't remember
23 that part.

24 Q Was it in the middle of the day?

25 A I don't remember the time.

1 Plotkin

2 Q Do you recall when you decided
3 she had stolen from Equinox?

4 A I don't. It was also a process
5 that led us to believe that.

6 Q It was a process that led you to
7 believe that?

8 A Yeah, throughout the
9 investigation.

10 Q And as you sit here today, you
11 still believe that?

12 A Absolutely.

13 Q And you believe that someone who
14 would volunteer to take a lie detector test
15 would have stolen something?

16 A At the point of termination, the
17 worst possible punishment, then you come out and
18 say it. She didn't say that in our first
19 initial conversation with her.

20 Q I'm just asking you, she
21 volunteered to take a lie detector test, yes or
22 no?

23 A She did.

24 Q Do you think she was being
25 dishonest then, as well?

1 Plotkin

2 A Yes.

3 Q And I take it as Mr. Sanders'
4 supervisor, Larry's supervisor, that you had
5 knowledge of Ms. Ashdown's overall performance;
6 is that correct?

7 A Yes.

8 Q And performance history; is that
9 correct?

10 A Yes.

11 Q Had she ever been accused of
12 dishonesty before?

13 A No, she hadn't.

14 Q Had she ever been accused of
15 stealing before?

16 A No, she hadn't.

17 Q Did you find anything in her
18 record prior to this incident that she is a
19 dishonest person?

20 A No.

21 Q Did anyone accuse her of being
22 dishonest?

23 A No.

24 Q Had she been given any written
25 warnings?

1 Plotkin

2 A I don't believe so.

3 Q Had she been given any verbal
4 warnings?

5 A I don't believe so.

6 Q And so it's your belief based on
7 your personal knowledge that Ms. Ashdown would
8 have risked ruining her career by stealing \$100
9 from Equinox?

10 MR. McPARTLAND: Object to
11 the form.

12 A I don't know why people do the
13 things they do.

14 Q I'm asking you based on your
15 observation. You believe she took that risk?

16 MR. McPARTLAND: Object to
17 the form.

18 A I absolutely do believe she took
19 that risk.

20 I don't know why she did it, but
21 I believe it.

22 Q And you believe that after she
23 stole money from or stole from Equinox, I guess
24 not money, actual money, but after she stole
25 from Equinox, at some point she was offered a

1 Plotkin
2 position as a personal trainer; is that correct?

3 A That is correct.

4 Q And did you support that
5 decision?

6 A I didn't love it. But she wasn't
7 in a position any longer where she would be able
8 to steal or manipulate the system, so I didn't
9 think that her behavior would be able to repeat
10 itself.

11 Q So as a personal trainer, you
12 wouldn't be able to steal?

13 A Yeah. I mean, you don't have
14 your codes or anything like that. You can't go
15 into the computer and manipulate things, so she
16 would never be able to repeat her behavior.

17 (Letter dated January 9,
18 2013 to Joseph Matarazzo from The
19 Harman Firm was marked as
20 Plaintiff's Exhibit 1 for
21 identification, as of this date.)

22 BY MR. HARMAN:

23 Q I'm handing you what has been
24 marked for identification as Plaintiff's Exhibit
25 1. Please take a look at it.

1 Plotkin

2 This is the January 9th letter
3 from my office to Joseph Matarazzo.

4 Please take a look at it
5 (handing).

6 A (Perusing document.) Do you want
7 me to read this whole thing?

8 Q Have you seen this document
9 before?

10 A I believe so.

11 Q And when did you see this
12 document?

13 A I believe when we first got
14 served with the papers.

15 Q Well, this document is dated
16 January 9, 2013.

17 A So then maybe I didn't see this.
18 I thought this was one of the original
19 documents.

20 Q Do you recall seeing this
21 document in January of 2013?

22 A I don't know. I might be getting
23 my documents confused.

24 Q Did you ever, do you recall
25 receiving a -- by the way, the re: line, this is

1 Plotkin

2 a letter, a January 9th letter addressed to
3 Joseph Matarazzo.

4 The re: line, Kerry
5 Ashdown/Equinox et al.

6 Prior to being served with the
7 lawsuit, you described that you were at the club
8 that day?

9 A I believe so.

10 Q When the lawsuit was served on
11 the Soho location?

12 A Uh-hum.

13 Q Prior to being served with the
14 lawsuit, did you ever make any efforts to
15 preserve any information related to Kerry
16 Ashdown?

17 A I don't remember.

18 Q So you have no recollection of
19 preserving any documentation?

20 A I don't. I don't.

21 Q Now, you have testified that
22 there are occasions where codes are shared with
23 other employees, correct?

24 A Usually just --

25 Q Just please answer my question.

1 Plotkin

2 Are you aware of codes being shared? Yes or no.

3 A Yes.

4 MR. McPARTLAND: Object to
5 the form.

6 Q And there are, in addition to
7 managers at locations, there are also assistant
8 managers, correct?

9 A Correct.

10 Q And do assistant managers have
11 their own codes?

12 A Yes.

13 Q And isn't it true that there were
14 two personal trainers who were given credit for
15 sessions as part of the Ashdown investigation,
16 correct?

17 A Correct.

18 Q And do you recall the names of
19 the personal trainers?

20 A Offhand, no.

21 Q Were they terminated?

22 A No, they were not.

23 Q Did you believe that those two
24 trainers had engaged in stealing?

25 A They didn't have the power to

1 Plotkin

2 steal. If someone put money in their paycheck
3 and they didn't say anything, I don't know if we
4 call that stealing. Their boss had done it, so
5 they might have just turned a cheek to it and
6 enjoyed the resources that were given to them.

7 I don't think we would call that
8 stealing.

9 Anytime your boss gives you money
10 or resources, I don't think you can blame that
11 person that receives it if they don't personally
12 believe that it was theft themselves.

13 Q I'm not really sure I'm following
14 you, but if someone pulls a session,
15 participates in pulling a session that they did
16 not conduct, is that stealing?

17 MR. McPARTLAND: Object to
18 the form.

19 A Repeat the question.

20 Q If a trainer --

21 A Uh-hum.

22 Q -- has a session pulled that he
23 did not complete and he knows he didn't complete
24 it, is that stealing?

25 MR. McPARTLAND: Object to

1 Plotkin

2 the form.

3 A It would be, but the
4 trainer can't pull that session.

5 Q Please just answer my question.
6 Is it stealing?

7 A Yes.

8 Q Did you maintain a file on
9 Ms. Ashdown?

10 A Did I maintain a file? I did
11 not. That would have been Lawrence's job as her
12 general manager.

13 Q And where would he keep that
14 file?

15 A In his locked filing cabinet in
16 his office.

17 Q Did you communicate with Larry by
18 e-mail about Ms. Ashdown?

19 A I believe I did.

20 Q And how about by text message?

21 A No, probably not. I don't text.

22 Q So you personally don't have any
23 recollection of any efforts to look for any
24 information about Ms. Ashdown?

25 A What do you mean?

1 Plotkin

2 Q Well, I asked you if you had ever
3 made any efforts to look for any information
4 about Ms. Ashdown in response to Plaintiff's
5 Exhibit 1, and you said you don't recall. Okay?

6 And I just want the record to be
7 clear, have you ever engaged in any efforts to
8 look for any information regarding Ms. Ashdown
9 after, anytime after January 2013?

10 A You mean to look for e-mails and
11 stuff like that?

12 Q Anything?

13 A Our legal team sent me --

14 Q Please just answer the question.

15 A There was a point where I did
16 look for e-mails and other communications about
17 her.

18 Q When did you do that?

19 A I don't remember exactly, but I
20 did send them to our general counsel.

21 Q You said you looked for e-mails?

22 A That's correct.

23 Q Did you look for anything else?

24 A E-mails, documents. I believe
25 just e-mails and documents.

1 Plotkin

2 Q Did you look for anything other
3 than e-mails and documents?

4 A I do not believe so.

5 Q Did you look for any information
6 related to this camera that you have testified
7 about?

8 A No. And we knew that the camera
9 would have been erased by a certain time.

10 Q So you didn't look for it?

11 A We would have liked to have
12 gotten it, but we didn't.

13 Q Did you look for any information
14 related to the camera?

15 A No.

16 Q Did you have any conversations
17 with Mr. Sanders about the camera?

18 A Yeah.

19 Q When?

20 A After we were served?

21 Q Yes.

22 A We both said we wish we still had
23 that camera, but it loops and it runs over
24 itself.

25 Q So earlier you testified that you

1 Plotkin

2 didn't have any conversations with Mr. Sanders
3 after you were served.

4 A No. I said we had a particular
5 conversation right after we were served.

6 Q Okay.

7 And during that conversation, you
8 discussed the camera, right?

9 A Yeah. We discussed a bunch of
10 things.

11 Q Well, let's talk about what you
12 discussed during that conversation.

13 So you discussed the camera and
14 you said you wished you still had it?

15 A Yes.

16 Q Did you say anything else?

17 A We just went over this before.
18 We discussed --

19 Q You didn't mention the camera,
20 sir, when we went over it before.

21 So what else do you now recall
22 that you discussed that you didn't testify to
23 earlier?

24 A Memory works in funny ways. We
25 were both perplexed, as I mentioned before, we

1 Plotkin

2 both couldn't believe that she was suing us
3 after stealing from us.

4 Q I'm asking you what you
5 discussed. You didn't say you discussed a
6 camera earlier.

7 Is there anything else that you
8 recall that you discussed that you haven't
9 testified to other than this camera?

10 A I can't recall anything, but
11 maybe something more will come up.

12 Q You said you told him you wished
13 you had the camera?

14 A Sure.

15 Q What did he say, if anything, in
16 response?

17 A I don't remember, but I'm pretty
18 sure he agreed with me.

19 Q You're pretty sure he agreed?

20 A Yes.

21 Q Why are you pretty sure?

22 A Because it was one of those
23 pieces of evidence to us that we were like,
24 "Wow, she was right there at the time, you know,
25 if somebody else was in her office, she would

1 Plotkin

2 have seen them."

3 It made sense that all of these
4 transactions were taking place in her office at
5 her desk using her code and she was right there,
6 it must have been her.

7 It was a pretty important piece
8 of evidence at the time.

9 Q So you testified earlier that she
10 had someone else's code, correct?

11 A I believe so.

12 Q And you also testified that as a
13 personal trainer she couldn't have stolen
14 anymore, correct?

15 A Correct.

16 Q What was your opinion about her
17 returning to work as a personal trainer?

18 A I wasn't 100 percent for it, but
19 I understood why some of my colleagues wanted it
20 to happen, so I was accepting.

21 Q What percentage would you place
22 on your support for her returning to work as a
23 personal trainer?

24 A I was probably 50/50 with it.

25 Q Who supported that decision?

1 Plotkin

2 A I believe Lawrence. I believe
3 Elizabeth Minton. And that's all I could
4 testify to.

5 Q So you believe that Larry and
6 Elizabeth supported her returning to work as a
7 personal trainer and you were 50/50 on it?

8 A Yeah, I believe so.

9 Q And do you recall having a
10 conversation with Mr. Sanders about Ms. Ashdown
11 returning to work as a personal trainer?

12 A Convoluted, but I believe I
13 remember some conversation that we had over the
14 phone about it.

15 Q Tell me, this is a conversation
16 with Larry?

17 A Yeah.

18 Q Over the phone?

19 A Yes.

20 Q And was this prior to the
21 termination or after the termination?

22 A After.

23 Q It was after the termination?

24 A Yes.

25 Q Did you have any conversations

1 Plotkin
2 with Larry prior to the termination about
3 Ms. Ashdown remaining on as a personal trainer?

4 A I do not believe so.

5 Q And you recall having a
6 conversation with Larry after the termination?

7 A Yes.

8 Q Over the phone?

9 A Yes.

10 Q More than one conversation or
11 just one?

12 A I believe just one.

13 Q What did Larry say to you
14 regarding her returning to work?

15 A I recall that he wanted her, he
16 wanted, he was very empathetic, you know,
17 towards her and wanted her to be able to still
18 make a living.

19 I believe he said he did not want
20 her in his club, because it wouldn't be proper
21 after she was a manager there, but perhaps she
22 could be a trainer somewhere else in the
23 company.

24 Q And what, if anything, did you
25 say in response to that?

1 Plotkin

2 A I don't remember. I think I
3 accepted it, I said okay, and we moved on.

4 I certainly remember I wasn't 100
5 percent for it, but I would support him in that
6 decision.

7 MR. HARMAN: I'm sorry,
8 what was that answer?

9 (Whereupon, the record was
10 read back by the reporter.)

11 Q And did Ms. Minton weigh in on
12 that decision?

13 A Not that I could testify to, but
14 I believe at some point Lawrence and her had a
15 conversation around it and they both agreed to
16 it.

17 Q Did you ever have a conversation
18 at all with Ms. Ashdown regarding returning as a
19 personal trainer?

20 A I do not recall a conversation.
21 After the termination I do not believe we ever
22 spoke to each other.

23 Q But prior to the termination?

24 A I do not remember that.

25 Q During the termination?

1 Plotkin

2 A I do not remember that.

3 Q Would you have told her that she
4 could return to Equinox as a personal trainer?

5 A I probably would not have made
6 that decision on my own.

7 Q I'm asking if you would have told
8 her that?

9 A My answer is no then.

10 Q So you would not have told her
11 that?

12 A No.

13 MR. McPARTLAND: Just note
14 my objection to form.

15 Q And as you sit here today, would
16 you support Ms. Ashdown returning to Equinox as
17 a personal trainer?

18 A At this point in time?

19 Q Yes.

20 A No.

21 Q Why not?

22 A Because, once again, she is not
23 taking responsibility for her actions and she's
24 being even more dishonest about other things,
25 and my personal feeling on it is, you know, it's

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Plotkin

consistent lies over and over and over again. I would think even, I would think after what she has been through, she would have learned from it moved on, but being where we are right now, I'm embarrassed for her. I really am.

Q I'm not asking you about your feelings, you know, whether you are embarrassed.

A You asked me why. I'll tell you my feelings are involved.

Q I'm asking you as a professional.

A As a professional?

Q You said that Larry wanted to invite her to return to work at another location as a personal trainer, okay?

And that you supported that 50/50.

A Uh-hum.

Q Okay.

And I'm asking you as you sit here today, has your opinion on that professionally, has that changed?

MR. McPARTLAND: Object to the form.

A It hasn't changed about the

1 Plotkin

2 decision back then, but now we generally don't
3 let people come back or hire people that are in
4 lawsuits with us.

5 Q So you wouldn't hire her because
6 she's in a lawsuit with you?

7 A It's pretty much company policy.

8 Q There is a company policy that
9 says you don't hire someone --

10 A I think so. I believe so.

11 Q Why do you believe so?

12 A I mean, we don't allow members
13 who are suing us to continue being members.

14 Q I'm not asking about members, I'm
15 asking you about employees.

16 A I guess I'm making an assumption.

17 Q So you are assuming that there is
18 a company policy, but you are not sure?

19 A I'm not sure.

20 Q You said something about more
21 lies.

22 What do you mean by more lies?

23 A It's again, there is a lot of my
24 personal feelings built up in this. I believe
25 this whole lawsuit is a lie. She stole, she was

1 Plotkin
2 dishonest, and now she's suing us saying we are
3 discriminating against her, and naturally we
4 take that very seriously and it's, for me, it's
5 a bunch of lies and I make it a point not to
6 discriminate against anyone, let alone people
7 that might be ill or sick.

8 I take it very seriously.

9 Q Did you know that Ms. Ashdown
10 was ill?

11 A I do not believe I knew that, no.

12 Q That never came up in your
13 conversations with Mr. Sanders?

14 A No.

15 Q Did that ever come up in your
16 conversations with Ms. Minton?

17 A No.

18 Q Did you know that she was
19 undergoing chemotherapy?

20 A I did not.

21 Q Did you know that she was
22 undergoing radiation?

23 A No.

24 Q Did you look into her employment
25 history?

1 Plotkin

2 A I did not.

3 Q Ms. Minton never mentioned to you
4 that she was undergoing treatment for cancer?

5 A I do not recall anything like
6 that.

7 (Document Bates stamped
8 EQX-6359 and EQX-6360 was marked as
9 Plaintiff's Exhibit 2 for
10 identification, as of this date.)

11 BY MR. HARMAN:

12 Q I'm handing you what has been
13 marked as Plaintiff's Exhibit 2. It's an e-mail
14 chain with Matthew Herbert at the top that
15 begins with an e-mail from Melissa McGregor to
16 Lawrence Sanders and others dated September 2,
17 2011.

18 Please take a look at it
19 (handing).

20 A Sure. (Perusing document.)

21 MR. McPARTLAND: Just for
22 clarification on the record, it
23 has Bates stamp Nos. EQX-6359
24 through EQX-6360.

25 Q It's a two-page document. The

1 Plotkin

2 second page doesn't appear to have much, does
3 not have much text on it other than a phone
4 number and what looks like a web address.

5 There are two e-mails on the
6 first page.

7 Tell me when you're ready.

8 A Okay. (Perusing document.)

9 Okay, I'm ready.

10 Q Drawing your attention to the
11 second e-mail from Larry Sanders to Joe
12 Matarazzo, Elizabeth Minton, David Harris,
13 copied to Matt Plotkin and others.

14 Did you receive this e-mail?

15 A Yes, I must have.

16 Q Did you receive it in September
17 of 2011?

18 A Yeah, I must have. I don't
19 remember it.

20 Q Is the e-mail an accurate
21 description of what took place?

22 A It must be.

23 Q You said you looked at, in
24 preparation for this lawsuit that you met with
25 your lawyer five months ago.

1 Plotkin

2 Did you meet with your lawyer at
3 any other time?

4 A I don't believe so.

5 Q So you haven't met with Mr.
6 McPartland since five months ago?

7 A It was about five months ago.

8 Q You met with him five months ago,
9 correct, approximately?

10 A Approximately, yes.

11 Q Have you met with him since then?

12 A No.

13 Q Have you met with any of his
14 associates?

15 A No.

16 Q Anyone who works with him?

17 A No.

18 Q Have you met with the general
19 counsel of Equinox since then?

20 A Not about this matter.

21 Q And did you speak with Mr.
22 McPartland on the phone to prepare for your
23 deposition?

24 A We spoke shortly, just about
25 address, time, stuff like that.

1 Plotkin

2 Q Anything other than general
3 information about address and time?

4 I mean, I'm asking about the
5 content.

6 In other words, did you have a
7 substantive conversation with him to prepare for
8 today's deposition over the telephone?

9 A We discussed some other things
10 and I think they are subject to my client
11 privilege.

12 Q I understand.

13 And was anyone else on the phone?

14 A No.

15 Q And did you review any documents
16 during those phone conversations?

17 A I do not believe so.

18 Q Did you have more than one phone
19 conversation?

20 A We might have had two.

21 Q When was the last conversation
22 that you had that was more than just --

23 A The last conversation was when
24 you guys canceled and I was in front of the
25 building and he called me up and apologized that

123

1 Plotkin

2 you guys canceled.

3 Other than that --

4 MR. McPARTLAND: None of
5 our communications other than
6 that.

7 That's okay, what you just
8 said, but nothing that I said to
9 you or you said to me, okay?

10 THE WITNESS: Okay.

11 BY MR. HARMAN:

12 Q So you had a conversation in
13 front of the building?

14 A Yeah.

15 Q How long did that last?

16 A Three minutes.

17 Q And prior to that, did you have a
18 phone conversation?

19 A I believe so.

20 Q And prior to that, did you have a
21 phone conversation?

22 A I do not think so.

23 Q So the conversation that you had
24 before the deposition, before the one that took
25 place in front of the building, how long did

1 Plotkin

2 that last?

3 A I just said, three minutes.

4 Q You told me the one in front of
5 the building lasted three minutes. I'm talking
6 about the conversation before that.

7 A I don't recall exactly. Maybe
8 five minutes.

9 Q And during that conversation, did
10 you look at any documents?

11 A I do not believe so.

12 Q So we are talking about two phone
13 conversations and an in-person meeting; is that
14 correct?

15 A I believe so, yes.

16 Q What do you recall reviewing at
17 Mr. McPartland's office?

18 MR. McPARTLAND: Objection.

19 Asked and answered.

20 THE WITNESS: Do I have to
21 answer?

22 MR. McPARTLAND: Yes, I'm
23 sorry, you can answer.

24 A Just what I said before, we
25 reviewed some e-mails and that's, I think that's

1 Plotkin

2 all I can remember.

3 Q Just some e-mails, that's all you
4 remember?

5 A Yes.

6 Q Do you remember anything about
7 the e-mails?

8 A It was various e-mails that went
9 back and forth between various people. I don't
10 remember them. I don't even remember seeing
11 this one before.

12 Q So you don't remember anything
13 about the e-mails that you reviewed?

14 A Only that they were about this
15 case.

16 Q And you don't remember reviewing
17 anything else other than e-mails?

18 A No.

19 Q Okay.

20 And how about, you said at some
21 point you were asked to look for information
22 regarding Ms. Ashdown. And you testified that
23 you looked for e-mails and you testified that
24 you looked for documents, correct?

25 A Uh-hum.

1 Plotkin

2 Q Did you look for anything else?

3 A You asked me that already.

4 I do not believe so.

5 Q I have seven hours under the
6 rules to talk to you and sometimes I am going to
7 ask you questions that are similar to questions
8 that I have asked you before.

9 You are going to have to do your
10 best to answer the questions and we'll move on.
11 My intent is not to harass you, my intent is to
12 gather information, okay?

13 A Uh-hum.

14 Q So you looked for e-mails and you
15 looked for documents and you don't recall
16 looking for anything else?

17 A I do not.

18 Q And where did you look for
19 e-mails?

20 A In my old e-mail, sent e-mails,
21 received e-mails.

22 Q And did you locate anything?

23 A I did.

24 Q And what did you do with them?

25 A I sent them to our general

Plotkin

counsel.

Q How did you do that?

A I believe I put them all in a file or a couple of files and I forwarded them along.

Q Electronically?

A Uh-hum.

Q So you put them all as part of one e-mail and forwarded the e-mail on to your general counsel?

A I believe it was a few e-mails, but yes.

Q And you said you searched for documents?

A I did.

Q And where did you do that?

A Again, old e-mail files that I have that would have contained documents. I have my document, which is a couple of folders that I have on our, one of our drives, I looked through that, and I don't believe I found any documents, only e-mails.

Q What drive did you look at?

A I have a drive that I can go to

1 Plotkin

2 any computer at any club and I have all my
3 documents in it. The drive is called Matthew
4 Plotkin's documents.

5 Q And that allows you to go to any
6 computer at any club?

7 A Any of my clubs, yes.

8 Q And you maintain documents?

9 A Yes.

10 Q As part of this investigation,
11 did you generate a document?

12 In other words, was there an
13 investigation memo?

14 A The only memo I received was from
15 general counsel saying find documents. I did
16 not make a memo of any sort.

17 Q Did Larry make a memo?

18 A Not that I know of.

19 Q Did Liz Minton make a memo?

20 A Not that I know of.

21 Q Did anyone memorialize this
22 investigation, as far as you know?

23 A Not that I know of. Other than
24 general counsel asking us to send us documents,
25 that would be the only memorialization that I

Plotkin

know of.

Q Okay.

But that was after litigation had commenced, correct?

A Yes.

Q Or after legal issues had been raised?

A Yes.

Q Prior to legal issues being raised, are you aware of anyone gathering any information in one spot regarding the Ashdown incident?

A I'm not aware.

MR. McPARTLAND: Note my objection to the form.

Q And you didn't gather any information in one spot regarding the Ashdown investigation?

A No.

Q And are you aware of Ms. Minton gathering any information in one spot regarding --

A I am not aware of that.

Q Are you aware of Mr. Sanders

1 Plotkin

2 gathering any information?

3 A No.

4 Q Do you need to take a break?

5 A No, I just wanted to get a piece
6 of gum.

7 Is that okay?

8 Q Sure. Drawing your attention
9 back to Plaintiff's Exhibit 2 in front of you,
10 the second e-mail, the second sentence of the
11 second e-mail says, "Matt explained to her that
12 if she would like to be a trainer at another
13 location for her to e-mail me tomorrow."

14 Do you have any reason to believe
15 that that's inaccurate?

16 A I do not. I forgot about it, but
17 I do not.

18 Q And it says, "She was still stuck
19 on she did not do this. Basically she feels
20 that Mauro had something to do with it."

21 Were you aware that she believed
22 Mauro had something to do with it?

23 A She mentioned it in her
24 termination, yes.

25 Q But it's your testimony as you

1 Plotkin
2 sit here today that prior to her termination she
3 never mentioned that Mauro had anything to do
4 with it?

5 A I don't believe so. I can't
6 remember.

7 MR. McPARTLAND: Objection
8 to form.

9 MR. HARMAN: Is there an
10 objection?

11 MR. McPARTLAND: Yes,
12 there is an objection to form.

13 Q When you say you don't believe
14 so, is that "I don't recall" or you are
15 confident that she never mentioned Mauro?

16 A I don't recall.

17 Q Did you ever speak with Mauro?

18 A About this?

19 Q Yes.

20 A No.

21 Q Did you speak with anyone about
22 this, other than Mr. Sanders and the individuals
23 that you have mentioned?

24 A While we were conducting the
25 investigation?

1 Plotkin

2 Q Correct.

3 A Myself and Liz Minton might have
4 had a conversation around it outside of the
5 group, I don't remember the exact content, but
6 that might have happened.

7 I don't recall exactly when or
8 the content, but mostly it was me and Lawrence
9 and then the whole group together making the
10 final decision.

11 Q I'm just asking you whether you
12 spoke with any other employee regarding the
13 allegations made against Kerry Ashdown?

14 A Other than the people on this
15 e-mail, no.

16 Q Who is Gian Pozzolini, is that
17 who you spoke about earlier?

18 A Yes, that's my boss.

19 Q And Melissa McGregor?

20 A Human resources.

21 Q When you were conducting your
22 investigation with Mr. Sanders, did Mauro
23 Maietta come up?

24 A I don't recall.

25 Q Did you discuss Kerry Ashdown's,

1 Plotkin

2 Kerry's performance history with Larry?

3 A I believe we had a discussion
4 that, you know, I'm paraphrasing actually, it's
5 over two years ago, that there was not
6 necessarily anything wrong with her performance,
7 that this is an unfortunate situation, and it
8 was a choice that she made and it was outside of
9 her performance.

10 Q What do you mean "outside of her
11 performance"?

12 A I mean, you have, you know, two
13 separate things, you have an employee's
14 performance and then their integrity and how
15 they make choices in the workplace.

16 You can have great performance or
17 mediocre performance and lack the integrity and
18 make poor choices.

19 They are two separate things that
20 sometimes you have to separate.

21 Q Do you have any professional
22 opinion about Ms. Ashdown's performance leading
23 up to the investigation?

24 A Yeah. I mean, honestly, when we
25 first hired her, we were very excited. We

1 Plotkin

2 thought her performance was great, she blew me
3 away in the interview. We look for talent, we
4 love talent.

5 Losing her was, we can't find
6 great people. Our people are our currency, they
7 are our commodity. The fact that we had to
8 terminate her hurt us.

9 Her performance was, well, she
10 had a couple of hiccups in there, I'm not saying
11 she was amazing and hit every single month, but
12 I believe, if I can remember correctly, her
13 performance, she did well, she was doing okay.

14 Q What were her hiccups?

15 A I don't recall exactly. She
16 didn't hit every month, she didn't hit her goals
17 every month.

18 She did have a situation where
19 she was, I can't recall all the details
20 perfectly, whether she was fraternizing with
21 some of the employees and going out with them
22 and spending time outside of work with her
23 employees and we got some complaints from some
24 other of her employees about favoritism, which I
25 believe Lawrence and Elizabeth Minton spoke to

1 Plotkin

2 her about. I was not involved with that.

3 Other than that though, she was
4 not a poor performer.

5 Q Is there a company policy
6 against, you used the word "fraternizing."

7 I'm not really sure what that
8 means.

9 Why don't you tell me what
10 fraternizing means?

11 A To me it means spending time
12 outside of work with employees that you manage
13 in a friendly setting and which might lead to,
14 in certain situations, a more than friendly
15 relationship.

16 So, you know, allegations I
17 believe from other employees were that she had
18 strong relationships with certain employees and
19 maybe even a romantic relationship with another
20 employee and that they accused her of favoritism
21 and favoring certain employees.

22 Q So it's your testimony that she
23 was accused of maybe having a romantic
24 relationship with another employee?

25 A If I remember correctly, yes.

1 Plotkin

2 Q Is that against company policy?

3 A Yes.

4 Q What's the company policy with
5 respect to romantic relationships?

6 A I don't know it for word for
7 word, but we are not to have romantic
8 relationships with our subordinates.

9 Q That's a company policy?

10 A It's not word for word, but, yes,
11 in and around that.

12 Q What does romantic relationship
13 mean?

14 A Good question.

15 Meaning anything where the
16 employee exceeds or crosses over the line of
17 just a normal work relationship or perhaps a
18 normal friendship.

19 Q I don't know what normal
20 friendship means. You have to tell me. It's
21 your company, your company policy.

22 So the company has a policy that
23 prohibits romantic relationships between a
24 supervisor and someone who is being supervised
25 by that person?

1 Plotkin

2 A Correct.

3 Q And what is a romantic
4 relationship under the company's policies?

5 A Under the company policy, it
6 might entail those two people having a physical
7 relationship of some sort. I think that's the
8 extent of it.

9 I would have to check our
10 employee handbook and bylaws, but generally when
11 that happens, it comes out in the workplace and
12 it affects things. People find out about it and
13 they accuse you of favoritism.

14 Now, this was just an accusation.
15 I'm not saying it actually happened. And this
16 was one of the hiccups perhaps in Kerry's
17 performance, but she was spoken to about this
18 and we moved on, we moved past it.

19 Q How do you know that she was
20 spoken to?

21 A I was told by Lawrence and
22 Elizabeth Minton that they spoke to her about
23 this.

24 Q About accusations of a romantic
25 relationship?

1 Plotkin

2 A Right.

3 Q And do you recall what the
4 response was?

5 A I don't.

6 Q And have you ever given anyone a
7 verbal warning for engaging in a romantic
8 relationship?

9 A I have terminated people for
10 doing it. I don't remember a verbal warning.

11 Q You have terminated someone for
12 being involved in a romantic relationship?

13 A Uh-hum.

14 Q Who did you terminate for being
15 in a romantic relationship?

16 A It was a general manager at the
17 time and he was in a relationship with someone
18 on staff.

19 Q Who did you terminate?

20 A His name was [REDACTED] McBride. He
21 was one of our general managers.

22 Q For what location?

23 A 92nd Street.

24 Q And he was involved in a romantic
25 relationship with someone he supervised?

1 Plotkin

2 A If I can remember, it was more
3 than one. It was multiple.

4 Q So he had romantic relationships
5 with more than one employee that he supervised?

6 A Yes.

7 Q And you terminated him for what
8 exactly?

9 A For breaking our employee
10 romantic relationship rule, I forgot the exact
11 wording, where a supervisor cannot romantically
12 be involved with another employee, and I believe
13 one after the employee, after the relationship
14 stopped and he started dating someone else on
15 staff, I believe one of them said she was being
16 sexually harassed by him, so I believe we
17 terminated him for both sexual harassment and
18 having a romantic relationship.

19 Q So Mr. McBride was accused of
20 sexual harassment?

21 A I believe so, yes.

22 Q Prior to his termination?

23 A Yes.

24 Q Was Ms. Ashdown investigated for
25 being in a romantic relationship?

1 Plotkin

2 A I don't remember. I don't know
3 how serious we took it at the time.

4 I know she was approached about
5 it, spoken to about it, and also, you know, I
6 remember that they spoke to her about a group of
7 trainers, that she was just getting really close
8 with, as well, and another group of trainers
9 thought that she was favoring.

10 I wasn't involved in the
11 conversation, so I do not have a detailed memory
12 of it.

13 (Whereupon, at 1:05 p.m., a
14 luncheon recess was taken.)
15
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17
18
19
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22
23
24
25

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Plotkin

AFTERNOON SESSION

October 8, 2013

1:40 p.m.

M A T T H E W P L O T K I N, resumed and
testified further as follows:

MR. HARMAN: Back on the
record.

CONTINUED EXAMINATION

BY MR. HARMAN:

Q Mr. Plotkin, during the break did
you discuss your testimony with anyone?

A No.

Q And have you discussed this
lawsuit with anyone outside of work?

A I believe I told my wife that I
had to go to a deposition today.

Q What did you say to her?

A I said I had to go to a
deposition today, don't try to call me, I'll be
busy.

She asked me some questions, I
said "I can't answer," and that was pretty much
that.

Q Have you had any other

1 Plotkin

2 discussions with your wife about the lawsuit?

3 A No.

4 Q How about with anyone else?

5 A No.

6 Q You haven't had any discussions
7 about the lawsuit with any of your family
8 members?

9 A No.

10 Q With any of your friends?

11 A No.

12 Q You testified earlier that as
13 part of that investigation that you conducted
14 with Mr. Sanders that you had observed Ms.
15 Ashdown on the premises on a camera; is that
16 correct?

17 A That's correct.

18 Q And in your mind that was at the
19 same time that she had stolen things?

20 A Correct.

21 Q Was that the only time that she
22 had stolen something?

23 A To my knowledge, yes.

24 Q Did you investigate as to whether
25 she had stolen something on any other occasion?

1 Plotkin

2 A I cannot remember. I only
3 remember that occasion.

4 Q But it was clear in your mind
5 that she had stolen something at that particular
6 moment?

7 A Yes.

8 Q And did you investigate anyone
9 else for stealing at that particular time?

10 A Not that I can remember.

11 Q Do you recall what documents you
12 reviewed, if any, as part of your investigation?

13 A There was a document that was
14 printed out by IT that showed what vouchers were
15 reinstated, then pulled and at what time, I
16 believe, it happened and which user pulled them.

17 Q Anything else?

18 A That's all I can remember.

19 (A document Bates stamped
20 EQX-6397 through EQX-6399 was
21 marked as Plaintiff's Exhibit 3 for
22 identification, as of this date.)

23 BY MR. HARMAN:

24 Q I'm handing you what has been
25 marked as Plaintiff's Exhibit 3 (handing).

1 Plotkin

2 Please take a look at it.

3 A (Perusing document.)

4 MR. HARMAN: For the
5 record, this is a two-page -- I'm
6 sorry, it's a three-page
7 document. It's Bates stamped
8 EQX-6397 to 6399.

9 The first page has a title
10 "New Record" on it.

11 Okay.

12 BY MR. HARMAN:

13 Q Do you recognize this document?

14 A I have never seen it in this
15 format. It's usually up on a computer screen
16 and it's our EAF system.

17 Q Did you make the decision to
18 terminate Kerry, Kerry Ashdown?

19 A I made it with a group of people.

20 Q So you have seen this up on a
21 computer screen; is that correct?

22 A This is the system we use on a
23 computer screen. Lawrence filled this out, I
24 did not help him fill this out.

25 I did not see this particular

1 Plotkin

2 termination EAF on a computer screen, no.

3 Q So it's your testimony that
4 Lawrence filled this out?

5 A Yes, to my knowledge.

6 Q And you did not help him fill
7 this out?

8 A Yes, to my knowledge.

9 Q Is there anything on here that
10 would be in your mind inaccurate?

11 A Let me read through it again.
12 (Perusing document.)

13 It looks to be accurate.

14 Q Do you believe that anything is
15 missing from this?

16 A I do not.

17 Q And you have testified to looking
18 at, with Mr. Sanders, looking at a camera.

19 How many meetings did you have
20 with Mr. Sanders, Larry, Lawrence?

21 A When we looked at the camera?
22 One.

23 Q And how many meetings did you
24 have with Lawrence regarding the investigation?

25 A I can't recall exactly. It was

1 Plotkin

2 mostly that one where we looked at the camera
3 and we discussed it.

4 We might have had some
5 conversations over the phone, as well, before we
6 all got on the phone together.

7 Q How long did the meeting take
8 place where you met with Mr. Sanders?

9 A Again, probably less than an
10 hour, more than 15 minutes.

11 Q And during that meeting, what
12 portion of the meeting was spent looking at the
13 camera?

14 A I can't tell you for sure.
15 Probably the greater part of that meeting.

16 Q And other than that meeting, can
17 you recall sitting down with him at any other
18 time as part of your investigation?

19 A No. We probably did some over
20 the phone though.

21 Q I understand you spoke over the
22 phone.

23 I'm talking about in person.

24 A Just when we questioned Kerry
25 outside of that.

1 Plotkin

2 Q You recall looking at one camera?

3 A Uh-hum.

4 Q Did you look at anything else
5 that day, during that meeting with Lawrence?

6 A I believe we looked at the
7 computer-generated sheet when all the sessions
8 were pulled as well.

9 Q And did you look at anything
10 else?

11 A Not that I know of.

12 Q So you looked at the camera and
13 you looked at the computer-generated sheet and
14 you don't recall looking at anything else?

15 A No.

16 Q And did you speak with anyone
17 else that day?

18 A Not that I can recall.

19 Q Did that happen to be a day where
20 you were at the Soho location for the day?

21 A I don't remember how long I was
22 there. I'm sorry.

23 Q And do you recall, as you sit
24 here do you recall the names of anyone else who
25 was involved in the pulled sessions

1 Plotkin

2 investigation?

3 A Other than the trainers here?

4 No.

5 Q Well, I'm asking you.

6 A I don't -- nobody else was
7 involved, to my knowledge, other than the people
8 that are written here, the trainers that the
9 sessions were actually pulled for.

10 Q Who are those people?

11 A I forgot their names, but this
12 refreshed me.

13 One of them was named Ryan.

14 Q Anybody else?

15 A (Perusing document.) A trainer
16 named Bobby.

17 Q And did you speak with Ryan?

18 A I did not.

19 Q And did you speak with Bobby?

20 A I did not.

21 Q Is it your testimony that these
22 sessions were all pulled under Ms. Ashdown's
23 code?

24 A All but Bobby's sessions, which
25 were pulled under our MITs code at the time.

1 Plotkin

2 Q What is MIT?

3 A Manager in training.

4 Q And who is the manager in
5 training?

6 A I forgot her name.

7 I forgot her name.

8 Q And did you speak with her?

9 A No, Lawrence and Liz spoke with
10 her.

11 Q And what was the outcome of that
12 conversation?

13 A They all said they knew nothing
14 about, the trainers said they knew nothing about
15 it, although their paychecks reflected more
16 income than it should have.

17 I believe one of the trainers hit
18 a bonus threshold because of the extra sessions
19 pulled. So it's hundreds of dollars different,
20 and that trainer never came forward and said,
21 "You guys paid me too much. Somebody pulled
22 sessions for a person that I never trained.
23 Wait, there's a mistake."

24 Q So were those trainers
25 disciplined?

1 Plotkin

2 A They were not. To my knowledge,
3 they were not.

4 Q And how about the manager in
5 training, whose code was used, she like Ms.
6 Ashdown denied any knowledge of her code being
7 used, correct?

8 A Correct.

9 Q And was she investigated?

10 A I believe they did investigate
11 her, yes.

12 Q How do you believe that?

13 A They told me they did. They
14 looked at when she was in the club, they spoke
15 with her. We knew that Kerry had access to her
16 code, but she did not have access to Kerry's
17 code.

18 Therefore, you know --

19 Q How did you know that?

20 A Well, Kerry told us that she had
21 access to her code when we sat down with her,
22 and she told us that she didn't have access to
23 Kerry's code.

24 Again, when we looked at the
25 camera, she was no where near the office when

1 Plotkin

2 this took place.

3 Q What is this woman's name?

4 A I forgot. I remember her
5 nickname, it was Corky.

6 Q What did she look like?

7 A Kind of dirty blond hair, spunky
8 gal, pleasant.

9 Q So you were able to determine in
10 this meeting that took place less than a hour
11 but more than 15 minutes, that Spunky was no
12 near anyplace where she could have stolen from
13 Equinox?

14 A At the time that it was stolen,
15 correct.

16 MR. McPARTLAND: Note my
17 objection to the form.

18 Q And you don't believe that Spunky
19 stole anything?

20 A I do not.

21 Q And that is based on your review
22 of this camera with Lawrence?

23 A That's correct.

24 Q And did you discuss the camera
25 with anyone?

1 Plotkin

2 A I believe when we all got on the
3 phone together and had a conversation, me and
4 Lawrence discussed it with them, yes.

5 Q And you have since discussed the
6 camera with Lawrence?

7 A When we were looking at the
8 camera, sure.

9 Q And then after that you discussed
10 it?

11 A We must have. We must have.

12 And we did with, you know, with
13 the group, as well, before we made the decision
14 to go ahead and terminate her.

15 Q Tell me how the camera was
16 discussed in the group.

17 A I don't remember. It was just
18 one of the pieces of evidence. I don't remember
19 the whole conversation.

20 Q And since you had the group
21 discussion, you have discussed the camera with
22 Lawrence, right?

23 A I don't remember.

24 Q You don't remember?

25 A No.

1 Plotkin

2 Q But in your mind it's a key piece
3 of evidence, correct?

4 A Yeah.

5 Q It was pretty important?

6 A Yes.

7 Q And you wish you still had that
8 camera?

9 A Yes.

10 Q Because that would prove that Ms.
11 Ashdown was a liar?

12 MR. McPARTLAND: Object to
13 the form.

14 A To me, if we didn't have the
15 camera, too, everything points to her as well.
16 It's key, but everything is still pointing.

17 Q Well, you've spoken a lot about
18 the camera today and you told me that you
19 discussed with Lawrence that you wished you
20 still had it, right?

21 A Yeah, sure.

22 Q Because that would have been
23 helpful to prove that in your mind that she's
24 still lying, right?

25 A Not to terminate her, but for

Plotkin

here, yeah.

Q You believe she was a liar?

A Yeah.

Q And did you believe that she was a liar at the time that you asked her to come back as a personal trainer?

A I did, I did. I believe she was lying to save herself, yeah.

Q What is your educational background?

A I graduated Kingsborough Community College and then I graduated from Hunter College with a bachelor's of science in physical education.

Q And do you have any other degrees?

A No.

Q And how about any training certificates related to your work?

A I was a certified personal trainer for a while, CPR certified.

Q Anything else?

A No.

Q Do you have any degrees in human

1 Plotkin

2 resources?

3 A No, I do not.

4 Q Have you ever attended any
5 classes in human resources?

6 A No, I have not.

7 Q Have you taken any classes in
8 personnel management?

9 A Some that the company has
10 provided.

11 Q Other than what the company has
12 provided, have you taken any classes?

13 A No.

14 Q Have you ever been disciplined at
15 Equinox?

16 A No.

17 Q Have you ever been given a verbal
18 warning?

19 A No.

20 Q What classes has Equinox provided
21 for you?

22 A We have had management training,
23 leadership training, sales training, financials,
24 training on how to read the financials, and when
25 I was a personal trainer, we had training, you

1 Plotkin

2 know, on how to be a personal trainer.

3 Q You said you were aware of people
4 having possession of other people's log-in
5 codes.

6 Tell me about your awareness of
7 that.

8 Other than what we have discussed
9 today with Ms. Ashdown and Spunky or whatever
10 her name is, who else has someone else's code?

11 A Sometimes a supervisor might have
12 a subordinate's code.

13 Q So that's not uncommon?

14 A That's not uncommon.

15 Q Give me examples of a supervisor
16 having a subordinate's code.

17 A Like Kerry might have been given
18 the code of her MIT.

19 Q Whose name is?

20 A Corky is what we called her. I'm
21 sorry that I don't know her real name.

22 Q I apologize, Corky.

23 What is her name? Because we do
24 know her name. I think it's just more
25 appropriate to find out what her name is.

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1 Plotkin

2 MR. McPARTLAND: Cornelia
3 Hobbie.

4 Q Cornelia, Ms. Hobbie, does that
5 refresh your recollection?

6 A Yes, it does. Thank you.

7 Q So other than what took place
8 with Ms. Hobbie and Ms. Ashdown, can you think
9 of other examples where supervisors had their
10 subordinates --

11 A Yeah, it might happen,
12 particularly if the subordinate doesn't have a
13 computer and IT can't send the code to them
14 directly, the supervisor would get it and give
15 it to them.

16 Q And that would be typical of a
17 manager in training, correct?

18 A Yeah, I think so.

19 Q The manager in training might not
20 have a place to sit yet or might be moving from
21 club to club during the training process,
22 correct?

23 A Correct.

24 Q And they might not ever be given
25 a station until they land in a permanent spot,

1 Plotkin

2 correct?

3 A Correct.

4 Q So there might be many instances,
5 more than one instance where a supervisor would
6 have a subordinate's pass code or access code?

7 A I think that's fair to say.

8 Q What's the Equinox professional
9 term for the code?

10 A Cashier code.

11 Q Cashier code.

12 So then is it fair to say that
13 there is nothing inappropriate about having a
14 subordinate's cashier code?

15 A You should have it and give it to
16 them and then you shouldn't use it, you should
17 use yours. Once you use it --

18 Q Did Ms. Ashdown tell you that she
19 had used her subordinate's cashier code?

20 A No, she didn't.

21 Q And all she told you is that she
22 had it, correct?

23 A Correct.

24 Q And you have just told me that
25 that's not uncommon in that situation?

1 Plotkin

2 A Correct.

3 Q And that Cornelia Hobbie was, in
4 fact, a manager in training, correct?

5 A Correct.

6 Q And you never sat down with Ms.
7 Hobbie and asked her about whether she had used
8 her code to pull any of these sessions?

9 A I did not.

10 Q Who did sit down with her?

11 A I believe Lawrence and Elizabeth
12 Minton.

13 Q Do you know that Lawrence and
14 Elizabeth Minton sat down with her?

15 A They told me they did, and I
16 believe their word.

17 Q And she denied that she pulled
18 the sessions, correct?

19 A That's correct.

20 Q And you looked for her on this
21 camera and you didn't see her, correct?

22 A That's correct.

23 Q Was it her day off, too?

24 A I don't remember.

25 Q But you're confident it was

Plotkin

Mauro's day off?

A Yes.

Q Are you and Mauro friendly?

A Only business.

Q Do you ever socialize with him
outside of work?

A No.

Q When is the last time you spoke
with him?

A I think I saw him last week in
the club.

Q And did this lawsuit come up?

A No.

Q Have you ever spoken with him
about this lawsuit?

A Maybe when we first got served.

Q Let's talk about that
conversation.

When did that conversation take
place?

A Whenever the date was that we got
served. I don't remember what the exact
conversation was around it.

And I don't remember what was

1 Plotkin

2 conversed, but it's very possible that we had
3 some conversations.

4 Q Why do you say that?

5 A I was at the club at the time. I
6 remember him being there.

7 And that's the extent to my
8 memory.

9 Q How is it that you recall that it
10 was Mauro's day off?

11 A Two reasons. One, generally
12 speaking, the way we set up the management
13 schedule is the personal training manager works
14 on Saturday and the fitness manager is off, and
15 the fitness manager works on Sunday and the
16 personal training manager is off.

17 They take turns having a day off
18 and working in the club by themselves in that
19 department.

20 So that particular day Mauro
21 would have been off. We didn't see him on the
22 camera and I believe Lawrence checked the
23 schedule and he did have the day off.

24 Q Why do you believe that Lawrence
25 checked the schedule?

1 Plotkin

2 A I believe he told me that.

3 Q And you believe this was one of
4 those Saturdays or Sundays?

5 A Yes.

6 Q Why do you believe that?

7 A I remember it being one of the
8 facts of the case.

9 (A one-page document Bates
10 stamped EQX-6400 was marked as
11 Plaintiff's Exhibit 4 for
12 identification, as of this date.)

13 BY MR. HARMAN:

14 Q There is nothing that prevents a
15 manager from coming and going from a club at
16 their leisure, correct?

17 A Correct.

18 Q I'm handing you what has been
19 marked as Plaintiff's Exhibit 4.

20 Please take a look at it
21 (handing).

22 A (Perusing document.)

23 MR. HARMAN: For the
24 record, this is a document
25 entitled "Confidential,

Plotkin

Attorneys' Eyes Only." It's a spreadsheet with a Bates stamp EQX-6400.

This is the unredacted version that the attorneys have agreed will only be used for the purposes of this litigation.

Okay.

BY MR. HARMAN:

Q Do you recognize this document?

A I do.

Q What is it?

A This was the document that we looked at that IT generated for us that showed the sessions being reinstated and pulled.

Q And do you understand the content of this document?

A It's hard to read, but for the most part, yes.

Q Other than it could be brighter, and we can always print out a better version of it if that would be helpful, but other than that, do you understand what the categories of information mean?

1 Plotkin

2 A For the most part, yes.

3 Q But do you believe that this is
4 the document that you used as part of your
5 investigation?

6 A Yes.

7 Q So when you testified that you
8 reviewed a camera and you reviewed a document
9 with Lawrence during that meeting that day, that
10 this was the document that you reviewed?

11 A Yes.

12 Q And tell me what you believe this
13 shows Ms. Ashdown did with respect to stealing.

14 A Focus your attention on the
15 sessions in the third column that say "used."

16 So those sessions were pulled for
17 someone to get paid for and they should not have
18 been pulled.

19 So you can see the first grouping
20 were pulled by Cornelia Hobbie, the bottom
21 grouping were pulled by Kerry.

22 Q So the bottom, you're talking
23 about the, there is a section, if you look at
24 the third line, right, the third column rather,
25 and you go one, two, three, four, five, six,

1 Plotkin

2 seven, eight, nine down, it begins "three used"?

3 A Correct.

4 Q Is that what you're talking
5 about?

6 A Yes.

7 Q And then there is one, two,
8 three, four, five, six, seven, eight, nine, ten,
9 eleven, there is twelve of those?

10 A And then five more on the bottom.

11 Q And then five more on the bottom.

12 What is your understanding of
13 that column, of those entries in that column
14 rather?

15 A Those sessions were marked or
16 pulled to be paid to the trainer where it says
17 "performed by," on the one, two, three, four,
18 five, six, seventh, I'm sorry, eighth column,
19 those sessions were now pulled or marked to pay
20 those trainers for the services, marked to pay
21 the person where it says "performed," the
22 commission for services, and we found out these
23 services were never rendered.

24 Q So when you say the eighth
25 column, do you mean "entered by"?

1 Plotkin

2 A No, I mean "performed by." Those
3 would be the trainers who would get paid for the
4 services, who actually pulled them.

5 Q And I asked you what about this
6 indicated that Ms. Ashdown had stolen something
7 and you said that these first, this first
8 section of used entries in the third column
9 indicated that Ms. Ashdown had stolen something,
10 correct?

11 A Yes. And the bottom five.

12 Q And the bottom five.
13 So the first twelve and the
14 bottom five?

15 A Yes.

16 Q And if you go to the column that
17 says "entered by," the first twelve were entered
18 by Cornelia Hobbie, correct?

19 A Correct.

20 Q Because that's what this sheet
21 shows, correct?

22 A Correct.

23 Q And the bottom five show they
24 were entered by Kerry Ashdown?

25 A Correct.

167

1 Plotkin

2 Q Correct?

3 A Yes.

4 Q And if you go to, just sticking
5 with, I'm just sticking with your numbers.

6 The fourth column says
7 "performance date"?

8 A Uh-hum.

9 Q What does that mean?

10 A That's actually when the sessions
11 were performed or supposedly performed,
12 allegedly performed.

13 Q And then what is the second
14 column -- I'm sorry -- what is next column over,
15 so that would be the fifth column, what does
16 that mean?

17 A "Created date," let's see.
18 I'm not exactly sure.

19 Q And then the next column over,
20 what does that mean?

21 A That's the expiration date of the
22 sessions. All of our sessions have a designated
23 expiration date.

24 Q So you are not certain what
25 this --

1 Plotkin

2 A "Created date" is, no.

3 Q And the "perform date" would have
4 been when this session was performed?

5 A Yes.

6 Q Is there anything on this chart
7 that indicates when the sessions were pulled?

8 A (Perusing document.) The perform
9 date.

10 Q How does that indicate when the
11 sessions were pulled?

12 A When you pull the session, that
13 turns out to be, if a member goes up to the desk
14 and says, "Hey, I did a session," and you pull
15 the session for that particular member with a
16 trainer, the perform date is the exact time the
17 session was pulled.

18 Q So the performed date is always
19 the same time the session is pulled?

20 A To my knowledge, yes.

21 Q So what did this, what does this
22 fourth column indicate? Does this fourth column
23 indicate in your mind that that's when the
24 individual session was pulled by Ms. Ashdown?

25 A Yes.

1 Plotkin

2 Q So starting with the three used
3 in the third column, it's your belief that Ms.
4 Ashdown at 2:12 on 8/13 pulled sessions, three?

5 A That's correct.

6 Q And going down a few lines, that
7 on July 30th at 10:13 in the morning that she
8 pulled sessions?

9 A That's correct.

10 Q And that going down, within the
11 same column, that on July 16th at 12:33 p.m. she
12 pulled sessions?

13 A That's correct.

14 Q And that on 8/13/11 at 10:53 a.m.
15 that she pulled sessions?

16 A That's correct.

17 Q And that on 11/16 at 12:33 p.m.
18 that she pulled sessions?

19 A I don't see 11/16.

20 Q I'm sorry, 7/16.

21 A At 12:33, yup, correct.

22 Q Just give me a few minutes. If
23 you want to use the restroom, but I just need a
24 few minutes.

25 I'm not quite ready to wrap up.

1 Plotkin

2 But give me a few minutes.

3 (Whereupon, at 2:19 p.m., a
4 recess was taken.)

5 (Whereupon, at 2:21 p.m.,
6 the deposition resumed with all
7 parties present.)

8 MR. HARMAN: Back on the
9 record.

10 BY MR. HARMAN:

11 Q Who was Ms. Ashdown's direct
12 supervisor?

13 A Lawrence Sanders.

14 Q And other than what you have
15 testified to, did you ever discuss any problems
16 with her performance?

17 A No, not that I can remember.

18 Q Did he ever tell you that she
19 yelled at anyone?

20 A Not that I can remember.

21 Q How about Mauro Maietta, have you
22 ever heard any reports about his performance
23 issues?

24 A No.

25 Q What is your overall

1 Plotkin

2 understanding of his performance?

3 A Mauro has an impeccable service
4 record with the company. He worked at another
5 one of my clubs prior to going to Soho as a
6 fitness manager, solid performer.

7 Q Did Ms. Ashdown ever accuse Mauro
8 Maietta of any misconduct?

9 A Not that I can remember.

10 Q Were you ever told that Ms.
11 Ashdown accused Mr. Maietta of any misconduct?

12 A Not that I can recall, no.

13 Q Is that the kind of information
14 that you would want to know?

15 A Always, sure.

16 Q But you weren't told?

17 A Not that I can recall, no.

18 Q If one of your managers at a club
19 accused another manager of making up a fake
20 e-mail address regarding a scheduling issue, is
21 that something that you would want to know
22 about?

23 A That's pretty vague, but, yes.

24 Q Dishonesty is what I'm talking
25 about.

1 Plotkin

2 A Absolutely.

3 Q If one manager accused another
4 manager of a dishonest act, I'm not trying to
5 trick you, I really am not, I'm just saying it
6 seems like to me that your overall job is to
7 make sure that the general managers of the clubs
8 are doing the best job they can to manage the
9 clubs that they manage and part of that is
10 dealing with overseeing a lot of people.

11 A Agreed.

12 Q And that dishonesty in the
13 workplace is not tolerated.

14 A Agreed.

15 Q And that there are varying levels
16 of dishonesty in the workplace and some give
17 rise to termination, correct?

18 A Agreed.

19 Q Some might give rise to
20 discipline, some might just be insignificant.

21 A Agreed.

22 Q Like don't take a pen anymore, go
23 buy your own pen?

24 A Agreed.

25 Q But if a manager had accused

1 Plotkin

2 another manager of a dishonest act involving
3 regular work duties, not a pen, but something
4 that was important enough that it would have
5 impacted other people, would you want to know
6 about it?

7 A Yes.

8 Q And do you think that that person
9 should be spoken to?

10 A Yes.

11 Q And if there was a way to
12 investigate that allegation, do you think that
13 allegation should be investigated?

14 A Yes.

15 Q Did Ms. Ashdown supervise anyone?

16 A She was Mauro's supervisor, and
17 the rest of the trainers in the group, probably
18 about 30 personal trainers.

19 Q And as Mauro's supervisor, would
20 she have had the final say, for example, in a
21 decision about scheduling?

22 A For the most part, yeah, unless
23 it was totally outlandish and then the general
24 manager might step in.

25 Q Of course, I agree with that, if

1 Plotkin

2 it was something out of the ordinary.

3 But, in general, on a day-to-day
4 scheduling issue, what trainers should be
5 scheduled or what program should be implemented,
6 as part of their relationship, would Ms. Ashdown
7 have had the final say in a routine scheduling
8 matter?

9 A Yes.

10 MR. McPARTLAND: Note my
11 objection to form.

12 A Yes.

13 Q Does the fitness manager play any
14 role in hiring personal trainers?

15 A Sure.

16 Q And does a fitness manager have
17 to sign off on the hiring of a personal manager?

18 MR. McPARTLAND: Object to
19 the form.

20 You can answer.

21 THE WITNESS: Can I
22 answer?

23 MR. McPARTLAND: You can
24 answer, yes.

25 A I would say they should both

1 Plotkin

2 agree. Our general structure is personal
3 training manager and fitness manager both agree
4 on a hire before they go ahead and hire.

5 I would say that the personal
6 training manager and the fitness manager both
7 agree on the hiring and then they go ahead and
8 hire.

9 If one of them doesn't agree that
10 person should probably not be hired or should be
11 elevated to the general manager for a decision.

12 Q I see.

13 And you said you don't text?

14 A Very rarely. In business, no.

15 Q Not at all?

16 A In business, no.

17 Q Do you have any recollection of
18 ever texting about Ms. Ashdown?

19 A I have no recollection of it.

20 Q Did you look for text messages?

21 A I did.

22 Q And how long have you -- do you
23 have a smart phone?

24 A Back then? Yeah, I had a
25 BlackBerry back then.

1 Plotkin

2 Q And what kind of phone do you
3 have now?

4 A I have an iPhone.

5 Q What happened to the BlackBerry
6 that you had back then?

7 A I think it got destroyed.

8 Q How did it get destroyed?

9 A I believe it just stopped
10 working. I dropped it a few times and it
11 stopped working.

12 Q Drawing your attention back to
13 Plaintiff's Exhibit 4.

14 A (Perusing document.)

15 Q Can you explain to me what is
16 meant by the entries that begin, looking at
17 line, column one, "1000498717," about
18 three-fourths of the way down, there are one,
19 two, three, four, five entries.

20 Can you explain to me what those
21 mean?

22 A May I point to what I think
23 you're talking about?

24 Q Sure.

25 A You're talking about this column

1 Plotkin

2 here (indicating)?

3 Q Yes.

4 A I believe that's the membership
5 ID.

6 Q Okay.

7 And then the next column is an
8 individual's name and then the number 44 and
9 then reinstated, and then a date.

10 We have discussed what the next
11 column means, right, that's when they expired;
12 is that correct?

13 A Yup.

14 Q Okay.

15 And the next column is Kerry
16 Ashdown's name, correct?

17 A "Performed by" column?

18 Q Yes.

19 A Yes.

20 Q So is it your understanding that
21 with respect to these five entries that Kerry
22 Ashdown reinstated these sessions?

23 A Which sessions are you exactly
24 talking about?

25 Q Well, I'm trying to understand

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1 Plotkin

2 what this is. This is part of your
3 investigation. I just want to understand what
4 this document means.

5 There are five sessions listed
6 there, correct?

7 A The first five?

8 Q Not the first five, the ones that
9 I pointed to you that begin --

10 A Oh, okay.

11 Q The member's ID, Daniel Lyons,
12 about three-fourths of the way down, starting on
13 July 16th?

14 A Okay.

15 Q At 12:32?

16 A Okay. I've got it.

17 Q Okay.

18 What in your opinion does this
19 mean, that these sessions were reinstated?

20 A They were once expired and then
21 by reinstating them you make them active again
22 so they can be pulled so the member can use them
23 and the trainer can get paid for them.

24 Q How is it that they were -- well,
25 what does the fifth column mean then?

1 Plotkin

2 A (Perusing document.) The created
3 date?

4 Q No, the next column over.

5 A Expiration date.

6 Q So that's the date that the
7 sessions expire?

8 A Yes.

9 Q Well, according to that column,
10 the sessions hadn't expired yet, correct?

11 A (Perusing document.) I'm not
12 sure.

13 Q So you're not sure whether they
14 had expired yet or you're not sure what the
15 column means?

16 A Oh, I see what you mean.
17 Once they were reinstated, that
18 would be their new expiration date.

19 Q Okay.

20 So they get reinstated for a
21 period of time?

22 A Yes.

23 Q And how long is that?

24 A It depends on the type of
25 service.

1 Plotkin

2 Generally speaking, about six
3 months.

4 Q So there are only five
5 indications on this sheet of Ms. Ashdown pulling
6 sessions, correct?

7 A With her own code, correct.

8 Q Right.

9 And it's your understanding that
10 she reinstated expired sessions and then pulled
11 them, correct?

12 A Correct.

13 Q And would you agree that this
14 sheet says that that was done on two separate
15 days approximately one month apart?

16 A Correct, with this five, yes.

17 Q And it involved one individual,
18 Ryan Hopkins?

19 A Correct.

20 Q An individual trainer?

21 A Correct.

22 Q And that other than with respect
23 to those five entries for sessions being pulled
24 and the reinstatement of those sessions, that
25 Ms. Ashdown's name doesn't appear as someone

1 Plotkin

2 having pulled other sessions, correct?

3 A Correct.

4 Q Do you have any recollection, do
5 you have any recollection of whether Ryan
6 Hopkins was disciplined for not bringing the
7 additional sessions to anyone's attention?

8 A I don't recall.

9 Q And Bobby Dwyer?

10 A I don't recall.

11 Q And we have talked about Cornelia
12 Hobbie.

13 Is there any additional
14 recollections you have other than what you have
15 already testified to?

16 A No, sir.

17 Q Other than what you have
18 testified to, have you ever terminated anyone
19 for doing what you allege Ms. Ashdown did?

20 A The exact same thing?

21 No.

22 Q Have you ever investigated anyone
23 for doing what, other than what you have
24 testified to, for doing what Ms. Ashdown did?

25 A Exactly what she did?

1 Plotkin

2 No.

3 Q You testified today using some
4 pretty strong words that Ms. Ashdown stole and
5 that she is dishonest and that she continues to
6 be dishonest, correct?

7 A Correct.

8 Q And you have now testified having
9 had your recollection refreshed that you did
10 invite her to come back as a personal trainer,
11 correct?

12 A Correct.

13 Q You have testified that Ms.
14 Ashdown didn't do her own investigation,
15 correct?

16 A Correct.

17 Q And that's part of the basis for
18 the termination, right?

19 And you expected her to do her
20 own investigation, correct?

21 A I wouldn't say it's part of the
22 basis.

23 It's one of the things that made
24 it look really not kosher.

25 Q It's part of what led to your

1 Plotkin

2 conclusion to terminate, right?

3 A Perhaps.

4 Q Well, perhaps or not, I mean, you
5 testified that it did.

6 So did it or did it not?

7 MR. McPARTLAND: Object to
8 the form.

9 You can answer.

10 A I don't remember exactly what I
11 was thinking then, but let's say it added to the
12 reason we terminated her, absolutely.

13 Q So we will just use your wording.
14 It added to the reason, her
15 failure to conduct her own investigation added
16 to your conclusion to terminate her?

17 A Yeah.

18 Q And how would you, you said it
19 was too late for her to take a lie detector
20 test.

21 How would you have expected her
22 to conduct her own investigation?

23 A At a minimum I would have
24 expected her to partner up with Lawrence and
25 say, "Lawrence, we have to figure this out.

1 Plotkin

2 Somebody used my code to pull sessions for other
3 people and myself. Somehow I missed it on my
4 own paycheck, shame on me. We've got to figure
5 this out. This looks bad for me. Let's sit
6 down. Let's figure it out. Let's look at the
7 tape together. Let's look at the computer
8 generation together."

9 She did none of that.

10 Q Are you saying she was told about
11 the tape?

12 A She knows there's cameras
13 everywhere.

14 Q So you're saying she knows
15 there's cameras and she should have looked at a
16 tape?

17 A She should have been proactive
18 with her boss and said, "Let's figure this out.
19 I didn't do this, so let's figure this out
20 together."

21 Q So you're saying she wasn't
22 proactive?

23 A No.

24 Q And that she didn't look at the
25 tape?

1 Plotkin

2 A Correct.

3 Q And do you know whether Lawrence
4 asked to sit down with her and look at a tape?

5 A I don't believe Lawrence asked
6 her to sit down with him and specifically look
7 at anything.

8 He asked her to look, and this is
9 his words, he asked her to look into it and she
10 never did.

11 I was not there for that
12 conversation, but she never did.

13 Q So you would have expected her to
14 ask to look at a tape, to ask to look at the
15 records and to sit down with Lawrence and go
16 over all the evidence?

17 A If she didn't do what we're
18 saying she did, yes, but she didn't because she
19 knew the answer, she knew she did it, that's why
20 she didn't look into it.

21 Q So in your mind she refused to
22 conduct her own investigation because she's a
23 liar. I understand what you believe.

24 I'm asking you what you as an
25 experienced senior-level manager expected her to

1 Plotkin

2 do with respect to her own investigation.

3 So you expected that she would
4 ask to see all the evidence, look at the video,
5 sit down and look at the video.

6 Anything else?

7 A Maybe ask around her employees,
8 "Do you know if anyone was in my office at this
9 time? Did you see anyone in there?"

10 Our knowledge is she didn't do
11 any of this.

12 Q So she didn't speak with any of
13 the other employees and she should have?

14 A Yeah, she should have tried to
15 figure out who was -- what type of conspiracy
16 this was that someone was trying to frame her
17 and pay her money that she didn't deserve
18 herself and use her own codes. Yeah, she should
19 have looked into it. I would have. I'm sure
20 you would have, too.

21 I think any of us would have.

22 Q It doesn't really matter what I
23 would or wouldn't have done and probably at this
24 point what you would or wouldn't have done.

25 A Okay.

1 Plotkin

2 Q We are talking about Ms. Ashdown
3 and your knowledge of the situation and your
4 experience as a manager.

5 A Understood.

6 Q And there's been some testimony
7 in the case, and I'm not going to get into an
8 argument with you, it doesn't matter, that Ms.
9 Ashdown accused Mauro Maietta of having been
10 involved in this.

11 And your testimony is she never
12 made that accusation until she was terminated;
13 is that correct?

14 A That is correct.

15 Q Now, would you agree that with
16 respect to Plaintiff's Exhibit 2, that it says
17 that basically, and this is from Lawrence
18 Sanders, your partner in the investigation,
19 "Basically she feels Mauro had something to do
20 with it. She's still stuck on that she did not
21 do this. Basically she feels Mauro had
22 something to do with it. She alluded to the
23 fact that she believes he was working with
24 another person on staff." Okay?

25 Did Lawrence ask who?

1 Plotkin

2 A Again, I don't remember that part
3 of the conversation.

4 Q Do you think it would have been
5 important to know who she believed Mauro was
6 working with?

7 A Sure.

8 Q And do you know whether he asked?

9 A Lawrence told me he asked, yes.

10 Q And what was her response?

11 A She wouldn't tell him.

12 Q So it's your testimony that she
13 said there was another person involved, but she
14 wouldn't tell him?

15 A From my recollection, yes.

16 Q Okay.

17 And that was, is that the full
18 extent of the investigation into her allegations
19 that Mauro Maietta was, in fact, the one
20 involved in the conspiracy?

21 A From what I understand, yes. I
22 mean, think about it --

23 Q No, I don't want you to tell me
24 to think about it.

25 A Okay.

1 Plotkin

2 Q What I want you to do is just
3 answer my questions and we will be here a lot
4 less time. Really, it will be better for
5 everyone. Okay?

6 A You've got it.

7 Q Her story is Mauro Maietta was
8 the perpetrator of the conspiracy.

9 My question to you, and it's a
10 little bit redundant, but just so the record is
11 clear, do you have any specific recollection of
12 Lawrence doing anything to investigate, setting
13 aside when it was revealed, and I'll tell you
14 that the testimony varies on that, okay?

15 A Okay.

16 Q Do you have any specific
17 recollection of Lawrence doing anything to
18 investigate the allegations that, in fact, Mauro
19 Maietta was behind the conspiracy to set Kerry
20 Ashdown up for the session pulling?

21 MR. McPARTLAND: Note my
22 objection to form.

23 Q You can answer.

24 A Other than us realizing that
25 Mauro was nowhere present that day and these

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Plotkin

times when these vouchers were pulled, I don't think we looked any deeper into it, because someone physically had to do this work, someone physically had to do this.

If Mauro wasn't around to do it at these particular times, on this particular day, we saw no point to look deeper into a conspiracy led by Mauro about pulling these vouchers.

Q So is it your testimony then that Mr. Maietta wasn't interviewed?

A No, I think Lawrence spoke to him about it, but nothing pointed to him. He wasn't present.

Q I just want the record to be clear now.

So you're saying that based on your review of the camera that day in the office for less than an hour, you were able to conclude that there was no reason to investigate Mr. Maietta any further?

A Yes, I believe so.

Q And that's because you didn't see him on the camera?

1 Plotkin

2 A Right.

3 Q But this camera, this footage
4 related to this camera hasn't been maintained?

5 A It has not.

6 Q And it wasn't shown to anybody
7 else?

8 A Just me and Lawrence.

9 Q And so if -- does this camera
10 look directly into the office?

11 A No.

12 Q Can you even see the office from
13 this camera?

14 A No.

15 Q And so if, for example, Mr.
16 Maietta was sitting in the office for an hour
17 and a half prior to the time that many of these
18 sessions were pulled at 2:14 on August 13th, you
19 wouldn't know, right, whether he was present in
20 the club, correct?

21 A Well, Kerry told us he wasn't, he
22 wasn't in the office.

23 I specifically asked her as well,
24 "Was Mauro in the office? Who was in the
25 office? You were the only one who was walking

1 Plotkin

2 towards the office. Tell us, please, help us
3 out, tell us who else was in the office."

4 She said she didn't recall anyone
5 else in the office.

6 If Mauro was in the office, she
7 would have seen him herself.

8 Q It's your testimony that Ms.
9 Ashdown said that Mauro was not in the office
10 during these time periods?

11 A Yes.

12 Q That you confronted her with each
13 of these different time periods and dates and
14 that she said that no one -- strike that -- she
15 said that Mauro was not in the office?

16 A Correct.

17 Q Did you ask if anybody else was
18 in the office?

19 A Yes.

20 Q And what did she say?

21 A She said nobody else was in the
22 office.

23 Q So under oath here today you have
24 a specific recollection of her telling you that
25 no one else was in the office during the

1 Plotkin

2 specific times that these sessions were pulled?

3 A That's correct.

4 MR. McPARTLAND: Objection.

5 Asked and answered.

6 Q Is that office the only place
7 where these sessions could have been pulled?

8 A No, but --

9 Q Just please answer my questions.
10 Is that office the only place
11 where these sessions could have been pulled?

12 A No. But this computer generation
13 tells us what computer these were pulled at.

14 Q Where does it say that?

15 A Do you see where it says, one,
16 two, three, four, five, six, seven, the seventh
17 column, "114 GM"?

18 Q Yes.

19 A That's the GM's computer.

20 "114 PTM"?

21 Q Yes.

22 A That's the personal training
23 manager's at the time, Terry Ashdown's computer.

24 They were pulled from her
25 computer with her code.

1 Plotkin

2 Q Well, some of them were --

3 A Some of them were, some were
4 Cornelia's code.

5 Q -- with her code and some of them
6 were pulled with Cornelia's code?

7 A Correct. I stand corrected.

8 As a matter of fact, she doesn't
9 even remember seeing Cornelia in the office.

10 Q You have a specific recollection
11 of her telling you that?

12 A Yes, I do.

13 Q What is your understanding of the
14 first seven or so entries, seven or eight
15 entries that were entered by Lawrence Sanders?

16 A That's just him reinstating
17 vouchers.

18 Q What does that mean?

19 A That means those members might
20 have called him up and said, "Listen, I want to
21 start using my sessions again. I know they are
22 expired. Can you reinstate them for me?"

23 Nobody gets paid from that.
24 Nobody gets bonused on that. It just allows
25 them to be reused.

1 Plotkin

2 Q I see.

3 So that line indicates that Mr.
4 Sanders had reinstated members' sessions?

5 A Correct.

6 Q And is it fair to say that it
7 just so happened that he reinstated members'
8 sessions during the exact same
9 two-to-three-minute period that you are alleging
10 that Kerry Ashdown pulled sessions?

11 A That's correct.

12 Q And so is it your belief that Mr.
13 Sanders was in the gym on that day at that time?

14 A Yes.

15 MR. HARMAN: Let me just
16 take a few minutes.

17 (Whereupon, at 2:51 p.m., a
18 recess was taken.)

19 (Whereupon, at 2:55 p.m.,
20 the deposition resumed with all
21 parties present.)

22 MR. HARMAN: Back on the
23 record.

24 (Second amended complaint
25 was marked as Plaintiff's Exhibit 5

1 Plotkin

2 for identification, as of this
3 date.)

4 BY MR. HARMAN:

5 Q I'm handing you what was marked
6 as Plaintiff's Exhibit 5 (handing).

7 Please take a look at it.

8 MR. HARMAN: For the
9 record, this document is entitled
10 "Second Amended Complaint."

11 A (Perusing document.) Do you want
12 me to read this entire document?

13 Q I just want to know if you
14 recognize this document.

15 A I believe this was one of the
16 documents that you served us with.

17 Q I'm not going to ask any specific
18 questions.

19 I just want to know if you are
20 aware of the document and if you've read it
21 before?

22 A I believe so, yes.

23 (Defendants' responses to
24 plaintiff's first set of
25 interrogatories was marked as

Plotkin

Plaintiff's Exhibit 6 for
identification, as of this date.)

BY MR. HARMAN:

Q I'm handing you what's been
marked as Plaintiff's Exhibit 6.

This is defendants' responses to
plaintiff's first set of interrogatories
(handing).

A (Perusing document.) Okay.

Q Have you seen this document
before?

A I don't believe so.

Q Can you turn your attention to
Page 7?

A (Perusing document.)

Q Page 7, interrogatory number 13
says, "Identify each and every individual with
information or knowledge concerning plaintiff's
work performance while employed with
defendants."

Response, "Equinox identifies
Lawrence Sanders, Elizabeth Minton and Matthew
Plotkin."

Is that a complete and accurate

1 Plotkin

2 list?

3 A Yes.

4 Q Within the region that you
5 oversee, if someone has a complaint of gender
6 discrimination, how would they raise that?

7 A There's a couple of avenues.

8 We have a hot line, a human
9 resources hot line that they could go to, they
10 could call directly to human resources, pick up
11 the phone, they can e-mail human resources in an
12 e-mail, or they could go above the person's head
13 that is discriminating against them.

14 We don't have a strong
15 paramilitary type structure where you can't go
16 over your boss' head.

17 We believe in communication and
18 anyone can go to anyone.

19 I could go to my boss' boss and
20 talk to him and talk to him about my boss, and
21 it would never be held against me.

22 Q When was the last time that
23 someone raised an allegation with you about any
24 type of conduct that could be illegal?

25 And by that, I don't mean someone

1 Plotkin
2 was rude, I mean, you know, he called so and so,
3 you know, the N word or faggot or something, you
4 know, something that fell within your category
5 that you testified to earlier, when was the last
6 time that someone brought something like that to
7 your attention?

8 A I can't remember.

9 Q You can't remember anything?

10 A No.

11 Q What about an allegation of
12 disability discrimination?

13 A I can't remember.

14 Q A sick employee, has a general
15 manager ever brought an issue to you with
16 respect to a sick employee?

17 A No.

18 Q Other than this issue with Ms.
19 Ashdown and this issue that we discussed with
20 the comment that Lawrence made, can you think of
21 any other instance in which you have been made
22 aware of a workplace issue with an employee?

23 MR. McPARTLAND: Note my
24 objection to form.

25 Go ahead, you can answer.

1 Plotkin

2 A Mr. McBride that I explained to
3 you was one example.

4 Q He was terminated?

5 A He was terminated.

6 Q Because he was alleged to have
7 sexually harassed someone after engaging in
8 multiple romantic relationships with employees
9 that he supervised?

10 A Correct.

11 Q Any other?

12 A Not that I can think of.

13 Q Do you have a file on Lawrence
14 Sanders?

15 A I do.

16 Q And is the written warning that
17 was given to him, is that in his file?

18 A It's either in there, but I also
19 sent it to human resources, so human resources
20 might have the hard copy, but I would imagine
21 it's in the file as well.

22 Q Why would you send it to human
23 resources?

24 A It's our policy when someone has
25 an allegation that, that serious, that human

1 Plotkin

2 resources gets the documentation behind it.

3 Q And in documentation, would that
4 include an e-mail or anything in writing?

5 A Well, I sent him the writeup
6 form, the employee performance form to them, a
7 hard copy of it, and they put it in his file and
8 I confirmed it with him.

9 It's -- the blank form is taken
10 out of our database and then you fill it out by
11 hand.

12 Q So when that form is filled out,
13 is it Equinox' policy that a copy of that form
14 always be sent to human resources?

15 A A verbal warning, no, but a
16 written warning where someone was harassed, yes.
17 Yes.

18 If it's someone who came in late
19 to work five days in a row and you give them a
20 written warning, no.

21 Q No, I'm not talking about late to
22 work.

23 I'm talking about, I want to try
24 to draw the line for you, because I really want
25 to understand.

1 Plotkin

2 I'm not trying to argue with you
3 at all.

4 But if an employee says, "I think
5 that," and I'm just making this up, by the way,
6 because I think it's easier, "I think that I'm
7 being treated differently because of my age."
8 Okay?

9 A Uh-hum.

10 Q A personal trainer, "I'm older
11 and I'm not being given some of the same
12 opportunities as the younger trainers."

13 And that's being voiced, and it's
14 being voiced to the personal training manager
15 team. Okay?

16 A Yes.

17 Q How would that situation be
18 handled?

19 A For the most part I would
20 encourage and strictly force any one of my
21 managers that I had a complaint like that to
22 bring it to human resources right away.

23 Q And human resources is what
24 specifically? Is that corporate human
25 resources?

1 Plotkin

2 A Yes.

3 Q So that's located at 895 --

4 A No. They have a different office
5 on Park Avenue.

6 Q So there is an office on Park
7 Avenue and a phone number to call and e-mails
8 and I guess access perhaps is on the web site
9 somewhere?

10 A Absolutely, and a hot line.

11 Q And a hot line.

12 Does the hot line go to the human
13 resources department?

14 A Yes.

15 Q And would you encourage the
16 managers to bring that to HR's attention as soon
17 as it's raised?

18 A Yes.

19 Q And have you ever participated in
20 any kind of training involving HR and processing
21 complaints of discrimination?

22 A Yes.

23 They have an on-line training
24 that they make us do once a year for harassment
25 and how to go to HR and who to go to and all

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2 that kind of stuff.

3 Q So is it fair to say that anytime
4 you've heard about any allegations of
5 discrimination, and I use that term broadly, but
6 any employee who is saying they have been
7 mistreated, it could be that it's not
8 discrimination, but it sounds like
9 discrimination, but as soon as you as a, again,
10 as an experienced manager, as soon as you hear
11 that, you would recommend that that person be
12 sent to the human resources department?

13 A Absolutely.

14 Q And do you always make that
15 recommendation?

16 A Absolutely.

17 Q And what is your understanding of
18 what, if anything, human resources does when and
19 if they are contacted?

20 A When they are contacted about
21 discrimination from what I understand, is they
22 do an investigation, they talk to the managers
23 involved and then sometimes, often they bring
24 all parties together, depending on the
25 situation, and they do the investigation and

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they figure out to how to handle it, whether the manager has been discriminating against the employee or not, and steps after that should be taken.

Maybe the employee needs to be transferred to another location, maybe the manager wasn't doing the right thing and he needs to be terminated or transferred.

I can't think of any instances where that happened.

But, you know, human resources is the focal point of that investigation and they bring the managers into it.

Q And is that a process that has been described to you by your superiors at Equinox, in other words, have you been trained on that process?

A Yes.

Q And have you been involved in that process?

A Yes.

Q And do you believe it works?

A Yes.

Q And do you believe that that

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2 process generally is implemented in the region
3 that you oversee?

4 A Yes.

5 Q Can you think of examples where
6 it has not been implemented?

7 A The only -- I can't think of any
8 examples where it wasn't implemented, because
9 the second it would hit my ears or my team's
10 ears, we would bring it to HR and the process
11 would start.

12 Any inkling of it, we bring it to
13 HR. It's wise to do so.

14 Q And in your professional
15 experience, would HR maintain some sort of
16 records on that complaint?

17 A Absolutely.

18 Q And do you have any, based on the
19 training and the information that you have been
20 given, do you have any knowledge as to what, if
21 anything, would end up in an employee's file?

22 A To my knowledge, any complaints
23 against an employee in a discriminatory fashion
24 would end up in their file, even if we found it
25 wasn't discrimination, we probably would leave

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2 it in the file anyway, because those types of
3 situations tend to repeat themselves.

4 Any write-ups because of
5 discrimination or other would be in someone's
6 file.

7 So basically, you know, anything
8 that is documented we put in an employee's file,
9 we send them to HR and a hard copy is put in
10 their file.

11 Q And what about the employee
12 making the allegation?

13 A What about it?

14 Q Well, if an employee makes an
15 allegation, in your experience, as you have just
16 described the process and what happens with the
17 person who is alleged to have done something
18 wrong, right?

19 A Right.

20 Q What happens, if anything, to
21 documents related to the individual who is
22 making the claim?

23 A From what I understand, nothing
24 is documented in their particular file.

25 Their complaint would be

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2 documented in the person who they're complaining
3 about's file.

4 Does that make sense?

5 Q Yes, it does.

6 I don't really know. So I'm
7 asking.

8 So even if it was
9 unsubstantiated, in your professional experience
10 at Equinox, if there was a complaint about an
11 individual, it would likely be in that
12 individual's file?

13 A Correct.

14 Q And who maintains files on,
15 formal personnel files on personal trainers?

16 A That would be the personal
17 training manager and the fitness manager.

18 Q And what happens when the
19 employees are terminated?

20 A When those managers are
21 terminated?

22 Q What happens when a personal
23 trainer is separated from the company, what
24 happens to their file?

25 A We usually send them to HR.

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2 Q So HR has all the files?

3 A They should. They should.

4 We send them, like with the
5 manila folder, the whole thing to HR.

6 Q And is that true of any
7 terminated employee?

8 A Should be. Should be.

9 When I was a personal training
10 manager, that's what I did. I waited, you know,
11 three months until after the person was no
12 longer there, and then I sent the file to HR.

13 Sometimes it would be an empty
14 file, but I would still send it.

15 Q So the only files that are
16 maintained on site are those of current
17 employees, and when I say "on site," at a
18 particular location?

19 A Yeah.

20 I mean, you wait for them to age
21 a little bit, and then you send them out after
22 the employee left, but, yes.

23 Q When you say "age a little bit,"
24 you mean for a couple of months?

25 A Yeah, 90 days at most.

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2 Q And then the personnel files of
3 managers at locations, is it fair to say that
4 there are probably like anywhere from six to ten
5 managers at a particular location?

6 A That's about right.

7 Q Those are maintained by the GM?

8 A Correct.

9 Q And theoretically in the GM's
10 office?

11 A Correct.

12 Q You then maintain files for the
13 people in your region at your boss' office?

14 A Correct.

15 Q And is it fair to say, and I know
16 that you don't have personal knowledge of this,
17 but is it fair to say that that is the general
18 protocol at Equinox, that managers maintain
19 personnel files for current employees in their
20 office or in a secure location?

21 A Correct.

22 MR. HARMAN: I don't have
23 any further questions.

24 MR. McPARTLAND: I don't
25 have any questions.

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THE WITNESS: Thank you.

(Whereupon, at 3:14 p.m.,
the deposition was concluded.)

MATTHEW PLOTKIN

Subscribed and sworn to

before me

this [REDACTED] day of [REDACTED], 2013.

NOTARY PUBLIC

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I N D E X P A G E

Witness	Examination By	Page
Matthew Plotkin	Mr. Harman	4

EXHIBITS

Plaintiff's Exhibits	Description	Page
1	Letter dated January 9, 2013 to Joseph Matarazzo from The Harman Firm	101
2	Document Bates stamped EQX-6359 and EQX-6360	119
3	A document Bates stamped EQX-6397 through EQX-6399	143
4	A one-page document Bates stamped EQX-6400	162
5	Second amended complaint	196
6	Defendants' responses to plaintiff's first set of interrogatories	197

REQUESTS:

Page 81: Mauro Maietta's e-mail communications reviewed by Mr. Plotkin

C E R T I F I C A T E

STATE OF NEW YORK)

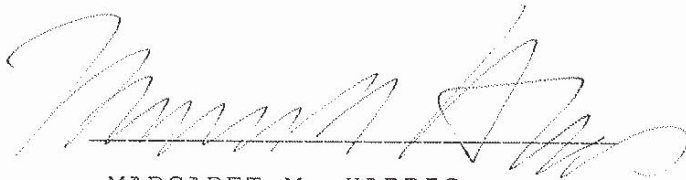
) ss.

COUNTY OF NEW YORK)

I, MARGARET M. HARRIS, a Shorthand
(Stenotype) Reporter and Notary Public of
the State of New York, do hereby certify
that the foregoing Deposition, of the
witness, MATTHEW PLOTKIN, taken at the
time and place aforesaid, is a true and
correct transcription of my shorthand
notes.

I further certify that I am neither
counsel for nor related to any party to
said action, nor in any wise interested in
the result or outcome thereof.

IN WITNESS WHEREOF, I have hereunto
set my hand this 10th day of October,
2013.



MARGARET M. HARRIS